

Proactive Health Care Regulatory Compliance

Enhancing the Value of Growing Private Equity Platform
Companies via Proactive Compliance Initiatives

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Agenda

1) What is a Compliance Program?

Hint - not just policies in a drawer

2) Why do we need one?

The Government

3) What are the Compliance “must haves” for a right-sized program?

Government Guidance

4) What are key organizing features?

It’s the “who” as much as the “what”

5) Document, Double Check, Document

Follow your own rules – including discipline

What Is a Compliance Program

- Not just “a” compliance program, but an “effective” compliance program
- A coordinated program to:
 - Identify risks
 - Prevent, as best as possible, improper behavior
 - Identify improper behavior not prevented
 - Correct damage caused by improper behavior
 - Discipline and train employees (including executives)
- Program is PROACTIVE not REACTIVE
- Program is ACTIVE not PASSIVE
- Program is NOT “internal affairs” – compliance helps a company succeed by minimizing costs of investigations, “government touches”, repayments, etc.

Why is an “Effective Compliance Program” Necessary?



Reality: Because it’s required. The government expects every health care company to have one.

Practically:

- Lessons likelihood of improper conduct:
 - HIPAA
 - F&A
 - Harrassment
 - Clinical quality failures
- Reduces likelihood of a qui tam action (whistleblowers)
- Reduces criminal culpability score under the Federal Sentencing Guidelines by up to 50 percent

Effective Compliance = Effective Company

- More (Positive) Practicalities
 - Better trained employees
 - Employees require less micro-management
 - Culture of self-reporting / peer-supervision
 - Better documentation / record keeping
 - Fewer billing disputes
 - Fewer “government touches” (investigations, audits, etc.) – when they happen, they are more easily addressed
 - Employee confidence and pride
 - Customer / Patient reputation for “doing the right thing”
 - Better Recruiting
 - Easier Marketing
 - Overall, Compliance Programs Provide Good ROI

“7 Elements”



Must Haves for Most Compliance Programs

- Look to OIG and other guidance
 - Work plan
 - Compliance guidance
- Federal Fraud and abuse
 - Stark, AKS, CMP
 - Description of prohibited conduct in common terms
 - Relationships with referral sources / sales / marketing
- Code of Conduct
- Internal auditing
- Internal reporting / communications / investigations
- Training

Privacy and Security



- Federal HIPAA laws but ALSO state specific laws
 - State laws can have stricter time lines, broader definitions, more stringent reporting requirements



- Separate policies for privacy and security
 - Possibly separate privacy and security officers
 - Needn't be FTE



- Risk assessments
 - Consider privilege
 - Not “one and done”

Fee Splitting and Kickbacks – State Specific Risks



Many states also prohibit a professional or professional practice entity from sharing professional fees with a third party (other than a partner, employee, or professional subcontractor) for any service, and prohibit the payment of money to parties in exchange for generating business or referrals for the professional or professional practice entity.

Corporate Practice of Medicine – Unique Challenges



Most states have some form of “corporate practice” prohibition, and professions other than medicine (doctors) may be covered – including psychologists or therapists.

At its core, CPOM is a prohibition on non-licensed individuals **owning** or **controlling** professional medical practices. Applicable law may be located in licensing rules, entity formation requirements; practice rules; or in opinions or guidance of AG or state licensing board(s).

States vary in their level of scrutiny and enforcement activity. Compliance in a “friendly” or “captive” PC structure requires the observation of formalities separating the **professional entity** and the **management entity**.

Key Organizational Features

- Clear leadership
 - Compliance team preferably separate from legal
- Written Policies, reviewed and updated at least yearly
 - Approved by leadership
 - Published to all
 - Trained yearly
- Focus on Specific Risk Areas Identified in Guidance
 - OIG Compliance Guidance
 - Sentencing Guidelines
 - Corporate Integrity Agreements
- Communication Structures
 - Hotlines and reporting

Defined Decision Making Roles – MSA Compliance Structures

- Written policies (including management agreement) should govern what decisions are made by Manager, what by Practice
- Policies should also describe where collaboration is necessary



- Clinical decision making includes hiring and firing of professionals, pricing, payor contracting, hours worked, services offered, treatments prescribed and similar subject areas that determine how professional services are provided by Practice
- Practice should have policies dictating who makes (or approves) such decisions – typically the owner of the PC
- Where owner approval is required, should be written and records of approval maintained

Implementation – There is no “effective” passive program



- Training
 - At least at hire and yearly
 - Mandatory
 - Board should receive training as well



- Background checks
 - At hire and monthly (exclusions)



- Review and update policies
 - Annual risk assessments
 - Ongoing updates as needed



- Document all training and ongoing assessments
 - If you don't document it, you didn't do it

Follow Your Own Rules



Perform audits as scheduled

- Record results and follow-up
- If schedule too aggressive – change the schedule



Do not fail to follow-up

- Every issue should be followed to closure



Get “Privileged”

- Where wrongdoing may exist – involve counsel and investigate



Report and Correct errors

- Internally and externally – repay if need be – “buying a release”



Discipline as called for

- Sanctions can range from oral warnings to termination, but – follow your own rules – punishment cannot vary with the perceived “value” of an employee

Stay Up to Date

- Compliance officer and counsel should understand industry trends
 - Enforcement trends
 - Common risks in the industry
 - Government and Payor focus areas
- Designate a person or group to remain “on top of...” industry issues
- Chances to comment on legislation or regulation
- Pending changes to state law
- Pending changes to LCDs or other payor or reimbursement rules or policies
- Pending changes to covered population (Medicaid expansion)
- Be Prepared For Change

Questions?



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Upcoming Webinars

Proactive Compliance Initiatives for Private Equity Platform Companies Webinar Series

- **Employee Benefits and Executive Compensation Compliance and Planning (Part 5)**

When: October 30, 2018 at 12:00pm – 12:45pm

People: Christopher McMican, Kevin Ryan, Peter Steinmeyer

Registration is complimentary. For additional details, visit www.ebglaw.com/events.