Compliance and Risk Management: A Marriage Made in LTC Regulatory Heaven

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Learning Objectives

1. This session provides tips on developing compliance and risk management programs with limited resources. We will compare and contrast the requirements of compliance programs and enterprise risk management programs, in the LTC community.

2. Who should be involved? Who is best to coordinate the efforts and can be “drafted” to assist? Presenters will touch a number of ways this can be approached by evaluating current activities through a compliance and risk lens.

3. Is it possible to marry current activities with a compliance program? We will describe the activities, functions, and programs which can be leveraged to meet the regulatory challenges of a compliance program and an enterprise risk management program.
The Basics
Question Time

1

Which, which is which

• Is it both?
• Is it compliance?
• Is it risk management?
• Can you tell the difference?
1

Which, which is which

Reporting
- Board Reports
- Dashboards
- Incident / Variance

Monitoring
- Risk assessments
- Utilizing statistics
- Trending

Collaborating
- Workmen’s Compensation issues
- Insurance / Regulators
- Incident investigations
- Managerial concerns

Enterprise Risk Management

the practice of identifying, managing, controlling, and monitoring all risks to the organization
Benefits of ERM

• Integrated process for risk and compliance
• Align with corporate objectives
• Monitoring and reporting
1 ERM processes

- Risk Tolerance
- Risk Identification
- Risk Monitoring
- Risk Assessment
- Risk Response

OIG Fundamental Elements

- Designation of compliance professional & committee
- Written standards of conduct & policies/procedures
- Reporting & investigating
- Enforcement & discipline
- Response & prevention
- Monitoring & auditing
- Education & training
1 Compliance Program Guidance for Nursing Facilities: March 16, 2000

- General guidance
- Assessing effectiveness
- Compliance program benefits
- Compliance program elements

1 Supplemental Compliance Program Guidance for Nursing Facilities September 30, 2008

- Compliance program benefits
- Reimbursement overview
- Specific risk areas
Supplemental Compliance Program
Guidance for Nursing Facilities
September 30, 2008

• Compliance benefits
• Reimbursement overview
• Specific risk areas

Quality Care
Resident Rights
Employee Screening
Billing & Cost Reporting
Use of Psychotropic medications
Kickbacks, Inducements, & Self-Referrals

42 CFR LTC Regulations

• October 4, 2016
• Requirements
  – Open communication
  – Policies & Procedures
  – Monitoring & auditing
  – High-level designated staff
  – Prudent employee selection
  – Periodic reassessment of compliance program
  – Consistency in enforcement of disciplinary processes
  – Reasonable response & mitigation of detected offenses
1

Special Cause: 5 or More facilities

• Mandatory annual training
  – Reinforcement of written standards
• Designated compliance officer
• Designated compliance liaison at each facility
Similarities
Differences
Areas of Opportunity

Compliance Process

Evaluate  Define  Prevent  Respond  Detect
1 ERM meet Compliance

- Risk Tolerance
- Risk Identification
- Risk Monitoring
- Risk Assessment
- Risk Response
- Evaluate
- Define
- Respond
- Prevent
- Detect

2 The tools
Question Time

2

Brainstorming

• Potential issues
• Potential solutions
Free tools

Hazard Vulnerability Assessment
Root cause analysis

- Step-by-step investigation chronology
- Multi-disciplinary
- Prevention strategies
- Retrospective analysis
- Root cause(s) identified

Root cause analysis

- What happened in this situation?
- What usually happens – norm?
- What should happen – policy?
Root cause analysis

- Why did it happen?
- How do we prevent it?
- How will we know that we got better?

Failure mode and effects analysis – FEMA

- Prospective analysis
- Focused review of specific process
- Potential failures and impact of failures identified

<table>
<thead>
<tr>
<th></th>
<th>Failure mode</th>
<th>Failure causes</th>
<th>Failure effects</th>
<th>Likelihood of occurrence (1-10)</th>
<th>Likelihood of detection (1-10)</th>
<th>Severity (1-10)</th>
<th>Risk profile number (1-10)</th>
<th>Actions to reduce occurrence of failure</th>
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<td>1</td>
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</table>
2 FMEA

- What could go wrong?
- Why would failure happen?
- What are the consequences?

2 Committee work

- Compliance
  - Work group
  - Governance / oversight

- Member
  - Process
  - oversight
  - Multidisciplinary
## Risk Assessment

- News Media
- OIG Work Plan
- Peer Experience
- Previous Surveys
- Regulatory Requirements
- Conditions of Participation
- OIG Guidance / Supplemental Guidance
2 Education

• Develop an educational plan
  – Include risk topics
    • Organization
    • Enterprise
    • Resident
    • Financial

Education Plan

<table>
<thead>
<tr>
<th>Source</th>
<th>Orientation</th>
<th>Annual</th>
<th>NIRI Changes</th>
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<td>Yes</td>
<td>Yes</td>
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<tr>
<td>• HR101.05.01: Reporting adverse events</td>
<td>Yes</td>
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<tr>
<td>• HR101.05.01: Patient rights, ethical aspects of care, services and processes used to address ethical issues based on job duties and responsibilities</td>
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<tr>
<td>Laboratory</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Staff who perform waived testing</td>
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<tr>
<td>• WT.03.01.01 EP 3: Training on each test performed</td>
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<tr>
<td>Compliance</td>
<td>Yes</td>
<td>Yes</td>
<td>All</td>
<td></td>
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<tr>
<td>• 164.310 HIPAA policies and procedures</td>
<td>Yes</td>
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<td></td>
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<td>• 164.310 HIPAA security issues</td>
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<tr>
<td>Red Flag Rule Section 114 of the Fair and Accurate Credit Transactions Act of 2003 (FACTA)</td>
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### The Compliance Committee

<table>
<thead>
<tr>
<th>Source Level</th>
<th>Metric</th>
<th>Indicators</th>
<th>2017</th>
<th>Jan</th>
<th>Feb</th>
<th>Mar</th>
<th>Apr</th>
<th>May</th>
<th>Jun</th>
<th>Comments</th>
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<tr>
<td>Compliance</td>
<td>ER transfer sheets completed correctly</td>
<td>100%</td>
<td>Jan</td>
<td>Feb</td>
<td>Mar</td>
<td>Apr</td>
<td>May</td>
<td>Jun</td>
<td></td>
<td></td>
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<tr>
<td>Compliance</td>
<td>C: OTR transfer sheets completed correctly</td>
<td>100%</td>
<td>Jan</td>
<td>Feb</td>
<td>Mar</td>
<td>Apr</td>
<td>May</td>
<td>Jun</td>
<td></td>
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<tr>
<td>Compliance</td>
<td>HH regulation changed requiring physician to have Face to face documentation in their record.</td>
<td>100%</td>
<td>Jan</td>
<td>Feb</td>
<td>Mar</td>
<td>Apr</td>
<td>May</td>
<td>Jun</td>
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<tr>
<td>HH</td>
<td>Hospice timeliness in getting Face to Face documentation.</td>
<td>100%</td>
<td>Jan</td>
<td>Feb</td>
<td>Mar</td>
<td>Apr</td>
<td>May</td>
<td>Jun</td>
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</tr>
</tbody>
</table>

### Dashboard Cautions

- Metrics
- Mechanics
- Enterprise wide
- Committee level detail
2 Auditing & Monitoring

• Consolidate reviews
  – Billing
  – Documentation
  – Regulatory Compliance
• Multiple purposes

Risk Tolerance
Define
• Brainstorming
• Policies & Procedures

Risk Identification
Prevent
• Education Plan
• Auditing

Risk Assessment
Detect
• Assessment
• Monitoring
• FMEA

Risk Response
Respond
• Disciplinary
• RCA

Risk Monitoring
Evaluate
• Dashboard
• Reporting
3 The view

Question Time
- Not the police
- Not the judge
- Not the regulator

### Attributes

<table>
<thead>
<tr>
<th>Risk Manager</th>
<th>Compliance Officer</th>
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<tbody>
<tr>
<td>• Inquisitive</td>
<td>• Inquisitive</td>
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<tr>
<td>• Flexibility</td>
<td>• Flexibility</td>
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<tr>
<td>• Emotional Intelligence</td>
<td>• Emotional Intelligence</td>
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<tr>
<td>• Visibility</td>
<td>• Visibility</td>
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<tr>
<td>• Credibility</td>
<td>• Credibility</td>
</tr>
<tr>
<td>• Communicator</td>
<td>• Communicator</td>
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</table>

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Emotional Intelligence

- Self-awareness
- Self-management
- Relationship management
- Social awareness

Recognition of your own emotions and their impact

Skilled in relationships management, engagement, communication

Control Impulses and emotions

Pick-up on emotional cues of others
3 Balance of hats

- Can it be done?
- Independence
- Self-management

3 Can you tell?
We need the whole picture to know.

Which, which is which?

• Integration
• Optimization
• Collaboration
3

How do we do it?

Closing thoughts
Questions?

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