HOW TO CONDUCT A COMPLIANCE RISK ASSESSMENT

HCCA COMPLIANCE INSTITUTE
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AVAILABLE GUIDANCE
42 CFR 483.85

(e) Annual review. The operating organization for each facility must review its compliance and ethics program annually and revise its program as needed to reflect changes in all applicable laws or regulations and within the operating organization and its facilities to improve its performance in deterring, reducing, and detecting violations under the Act and in promoting quality of care.

FEDERAL SENTENCING GUIDELINES

2(a)(5) The organization shall take reasonable steps—(...)
(B) to evaluate periodically the effectiveness of the organization’s compliance and ethics program;

OIG COMPLIANCE PROGRAM GUIDANCE

• “the OIG recommends that all nursing facilities evaluate their current compliance policies and procedures by conducting a baseline assessment of risk areas, as well as subsequent reevaluations”
• “How a nursing facility assesses its compliance program performance is therefore integral to its success. The attributes of each individual element of a compliance program must be evaluated in order to assess the program’s “effectiveness” as a whole. Examining the comprehensiveness of policies and procedures implemented to satisfy these elements is merely the first step. Evaluating how a compliance program performs during the provider’s day-to-day operations becomes the critical indicator.”

OIG Compliance Program Guidance for Nursing Facilities, 65 Fed Reg. 14289; March 16, 2000

HCCA/OIG COMPLIANCE EFFECTIVENESS ROUNDTABLE

• January 2017
• Not mandatory
• Diverse suggestions and ideas for how and what to assess

Available at: https://oig.hhs.gov/compliance/101/files/HCCA-OIG-Resource-Guide.pdf
WHAT ARE WE LOOKING FOR?

1) COMPLIANCE PROGRAM COMPONENTS
2) COMPLIANCE RISK AREAS

COMPLIANCE PROGRAM COMPONENTS
COMPLIANCE PROGRAM COMPONENTS

The Big Seven:
1. Standards, policies and procedures
2. Governance and leadership
3. Communication (reporting)
4. Training
5. Auditing and monitoring
6. Discipline (and employee screening)
7. Responding to violations and taking corrective action

COMPLIANCE PROGRAM COMPONENTS

Additional components for organizations with 5+ facilities:

- Mandatory annual training program
- Designated CO who reports directly to governing body
- Designated compliance liaisons at each facility

42 CFR 483.85
COMPLIANCE PROGRAM COMPONENTS

OIG Supplemental Compliance Program Guidance for Nursing Facilities added:

• An ethical culture

ASSESSING COMPLIANCE PROGRAM COMPONENTS
### ASSESSMENT GOALS

- Find out if something is done
- Documentation: Verify you can PROVE something is done
- Documentation availability: Make sure you can prove it immediately if the OIG shows up
- Identify strengths and weaknesses
- Establish a game plan for the next 12 months

### POLICY REVIEW: WHAT’S IN PLACE?

- Find the policy
- When was it last updated?
- Does the policy cover regulations, OIG CPGs, recent OIG Work Plans?
- Did legal counsel review policies?
- Were policies distributed (and can you prove it)?
- Did employees sign an attestation?
- Were employees trained on the policy?
POLICY REVIEW
EXAMPLE: RESIDENT RIGHTS

• Find policy – check for updates.
• Pull a sample of resident files. Can you locate the resident rights notice?
• Observe admissions paperwork/intake.
• What else?

COMPLIANCE REPORTING

What do we audit?
## COMPLIANCE REPORTING DATA

<table>
<thead>
<tr>
<th>RISK AREA/ISSUE</th>
<th># 2016 Reports</th>
<th># 2017 Reports</th>
</tr>
</thead>
<tbody>
<tr>
<td>HIPAA and Social Media</td>
<td>12</td>
<td>7</td>
</tr>
<tr>
<td>HIPAA and Disclosures</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>HIPAA and Photographs</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>HIPAA and Business Associates</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Photos and Abuse</td>
<td>4</td>
<td>1</td>
</tr>
<tr>
<td>Resident Rights</td>
<td>3</td>
<td>3</td>
</tr>
<tr>
<td>Resident Gifts</td>
<td>6</td>
<td>4</td>
</tr>
</tbody>
</table>
INVESTIGATIONS

What do we audit?

<table>
<thead>
<tr>
<th># of Reports</th>
<th>% Investigated within 30 days</th>
<th>Corrective Action Necessary</th>
<th>Corrective Action Documented</th>
<th>Follow Up Documented</th>
</tr>
</thead>
<tbody>
<tr>
<td>24</td>
<td>20</td>
<td>18</td>
<td>16</td>
<td>12</td>
</tr>
</tbody>
</table>
DISCIPLINE

What do we audit?

REMEDIATION

[Bar chart showing investigations by category and quarter: No Action Taken, Training, Policy Updated, Disciplinary Action, Consult Legal, Report to Authorities]
DISCIPLINARY ACTION BY RISK AREA

COMPLIANCE RISK AREAS
COMPLIANCE RISK AREAS

• Quality of care
• Residents’ rights
• Billing and cost reporting
• Employee (and contractor) screening
• Kickbacks, Inducements, and Self-Referrals
• Records
• HIPAA

RISK AREA ASSESSMENT: IDENTIFICATION OF RISKS

Internal Sources:
• Pepper reports
• Quality measures
• Annual and complaint surveys
• Routine audit findings
• Complaints and questions
RISK AREA ASSESSMENT: IDENTIFICATION OF RISKS

External Sources
• OIG Work Plan
• Corporate integrity agreements
• OIG/Provider settlement agreements
• Other federal agencies (e.g. OCR)

ASSESSING COMPLIANCE RISK AREAS
ASSESSMENT GOALS

- Find out if something is done
- Documentation: Verify you can PROVE something is done
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COMPLIANCE RISK AREAS

1. All risk areas identified
2. Prioritize risk areas
3. Measure audit effectiveness
4. Determine whether audit outliers are adequately investigated and remediated
5. Follow-up of remediated issues occurred
THERAPY AUDITS: ESTABLISH BASELINE RISK

- Establish baseline sample size
- Establish baseline frequency
- Initially - higher frequency
- Results will determine if audit frequency should be changed

THERAPY AUDITS: REVIEW AUDIT TOOL

Coverage requirements:
- SNF stay related to a condition that was treated in prior hospital stay
- Beneficiary needs and receives skilled nursing or therapy
- Physician order for skilled nursing or therapy

https://oig.hhs.gov/oei/reports/oei-02-09-00200.asp
THERAPY AUDITS:
REVIEW AUDIT TOOL

Documentation:
• Days and minutes of therapy provided in look-back period match MDS
• Therapy provided was reasonable and necessary
• Presence of inconsistencies between the amount of therapy provided before and after the look-back period

https://oig.hhs.gov/oei/reports/oei-02-09-00200.asp

THERAPY AUDITS:
REVIEW AUDIT TOOL

Medicare Benefit Policy Manual
• Therapy plan of care
• Daily encounter notes
• Minutes
• Progress reports
• Discharge summary
**THERAPY AUDITS: UPDATE AUDIT TOOL**

New Guidance:

**MAC Guidance on Minutes when using Modalities**

- Proper electrode placement
- Establishing proper settings
- Removal of electrodes
- Examining the skin before and after treatment


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**THERAPY AUDITS: ANNUAL REVIEW**

Identify any trends in the past 12 months of audits

- Therapy plan of care
- Daily encounter notes
- Minutes matching MDS
- Progress notes
- Discharge summary
- Triple check process

Look at the documentation: Are problems identified? And corrected?
GOVERNANCE AND CULTURE

AUDIT GOVERNANCE

Commitment/Engagement
- Board resolution
- Annual re-attestation
- Approve compliance budget
- Approve compliance officer job description
- Approve hiring of compliance officer
AUDIT GOVERNANCE

Reporting
• Board receives regular reports
• Quarterly report by CO – in person
• Reports reflected in board minutes
• Board reviews and approves annual review
• Board reviews and approves annual management plan

AUDIT GOVERNANCE

Compliance Officer engagement
• Procedures for direct report between CO and Board
• Board standing approval for CO to contact counsel
• CO provides oral report to Board at least quarterly
• CO provides monthly written reports to Board
AUDIT GOVERNANCE

Training
• Content
• Frequency
• Board member feedback/questions
• Documentation
• Monthly updates

CULTURE

What are we looking for?
• Support from administration and department managers
• CO involved in all operational matters
• Employees understand compliance and how to report
• Employees perceive a culture of compliance
CULTURE

How do we measure culture?
• Surveys
• Employee recognition
• Exit interviews
• Questions and complaints reviews
• Performance reviews

EMPLOYEE SURVEY DATA

If I found out about a compliance violation, I would feel comfortable reporting it to the Compliance Officer:

<table>
<thead>
<tr>
<th>Year</th>
<th>% Who Responded Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>2017</td>
<td>92.4</td>
</tr>
<tr>
<td>2016</td>
<td>92.4</td>
</tr>
<tr>
<td>2015</td>
<td>80.5</td>
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</tbody>
</table>
### EMPLOYEE SURVEY DATA

I know the name of the Compliance Officer.

<table>
<thead>
<tr>
<th>Year</th>
<th>% Who Responded Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>85%</td>
</tr>
<tr>
<td>2015</td>
<td>99%</td>
</tr>
</tbody>
</table>

### COMMITTEE SURVEY DATA

My role on the Committee is important.

<table>
<thead>
<tr>
<th>Year</th>
<th>% Who Responded Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>2016</td>
<td>60%</td>
</tr>
<tr>
<td>2015</td>
<td>60%</td>
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</tbody>
</table>
GAME PLAN FOR NEXT YEAR

WHAT’S WORKING? WHAT’S NOT? WHAT’S NEXT?

YOUR GAME PLAN: RISK ASSIGNMENT

<table>
<thead>
<tr>
<th>Risk Area</th>
<th>Risk Level</th>
<th>Audit Frequency</th>
<th>Date of Last Audit</th>
<th>Sample</th>
<th># issues Found</th>
<th>Follow Up Complete</th>
<th>Date of Next Audit</th>
</tr>
</thead>
<tbody>
<tr>
<td>Quality Care</td>
<td></td>
<td></td>
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<tr>
<td>Resident Rights</td>
<td></td>
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<tr>
<td>Employee &amp; Contractor</td>
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<td>Screening</td>
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<td>Billing and Claims</td>
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<td>Kickbacks/Stark Records</td>
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</table>
YOUR GAME PLAN: 12 MONTHS

<table>
<thead>
<tr>
<th>Findings</th>
<th>Action Plan</th>
<th>Completion Goal</th>
<th>Responsibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Compliance questions are sometimes documented.</td>
<td>Log all compliance Q&amp;A using the form provided. Log all compliance incidents. Report these to the Committee.</td>
<td>Begin now</td>
<td>CO</td>
</tr>
<tr>
<td>Staff frequently ask the Compliance Officer about HIPAA (and social media), resident gifts, and certification/recertification documentation.</td>
<td>Address these topics in the compliance training plan.</td>
<td>Throughout 2018</td>
<td>CO</td>
</tr>
<tr>
<td>Follow-up with reporters could be more consistent.</td>
<td>CO will remind department heads to follow up with staff who abide by the compliance program.</td>
<td>Throughout 2018</td>
<td>CO; department heads</td>
</tr>
<tr>
<td>Survey: There was a slight decrease in reception of [SNF]’s and its personnel’s commitment to compliance.</td>
<td>Increase frequency of positive compliance reminders and culture campaign efforts.</td>
<td>Throughout 2018</td>
<td>CO; CC</td>
</tr>
</tbody>
</table>

Risk Level 2, Moderate. Continue current practices. Emphasize activities to build a culture of compliance and support internal reporting.

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