



## Healthcare Reform Should Cause You to Review Your Compliance Program



To Our Healthcare Clients and Friends:

This issue of *IMA Insights* presents compliance program considerations for Hospital Executives in reaction to the impact of the recently enacted healthcare reform legislation. While some aspects of the act remain unclear, the provisions related to increased fraud and abuse initiatives included within the Patient Affordable Care Act (PACA) including several changes to the federal False Claims Act, the Anti-Kickback Statute and the requirements associated with timely repayments of overpayments are clear and require the attention of hospital executives and board members to make sure their compliance programs are functioning as necessary.



## BACKGROUND



Beginning in 1998, hospitals received guidance from the Department of Health and Human Services regarding how to develop and manage their compliance program. Additional provider types have received similar guidance specific to their industry. The opportunity to utilize the Office of Inspector General's Model Hospital Program Compliance (first published in 1998 with a supplemental document published in 2005) as a pro-active resource/planning tool to prepare for these new governmental initiatives is a very prudent step. A refresher on the elements of the OIG Model Compliance Program Guidance for Hospitals ("CPG") is a must-read at this time.

As a refresher, below is a list of the seven basic Compliance Plan Elements of the 1998 hospital CPG.

1. Designation of a compliance officer and compliance committee;
2. Development of compliance policies and procedures, including standards of conduct;
3. Development of open lines of communication;
4. Appropriate training and education;
5. Internal monitoring and auditing;
6. Response to Detected Deficiencies; and
7. Enforcement of disciplinary actions.

It is clear that one of the most important elements to having a successful Compliance Program is the direct commitment and involvement of the hospital board and senior management. Hospitals that have an organizational culture that values compliance are more likely to have effective compliance programs and, thus, are better able to prevent, detect, and correct problems. All Board Members and Senior Management should be fully informed about the government's initiatives and its' applicability to your institution. Further, leadership should be aware of the increased attention being placed on fraud and abuse issues by the government.

## CHALLENGES

Three of the specific provisions of the PACA that require attention include the following:

- The ability to bring a Qui Tam (whistleblower) case against a healthcare provider is easier. There are many details of the new provision that are not germane to this article, but the bottom line is that; healthcare providers should brace for the potential of more whistleblower cases.
- In most situations, it is now a requirement to report and return overpayments within 60 days after the overpayment is identified. Like all provisions this is open to interpretation and debate by the legal community, but the bottom line is that, if you have overpayments you need to act to make the repayment within 60 days or face the threat of being delinquent in the eyes of the government which could subject your organization to federal False Claims liability. The False Claims Act can subject you to draconian fines and penalties.
- \$350 Million in new funding has been budgeted to fight fraud and abuse over the next 10 years, which indicates that these recently enacted provisions (to address fraud and abuse issues) will most likely be used very aggressively.

To help frame the thrust of this initiative, consider the June 8, 2010 HHS Secretary & US Attorney General letter to State Attorney Generals which stated in part, "...the President has directed the Department of Health and Human Services to cut the improper payment rate, which tracks fraud, waste and abuse in the Medicare Fee for Service Program, **in half** by 2012." If improper payments are, as estimated to be at \$25 Billion annually, the government is looking to identify and eliminate approximately \$12.5 Billion of improper payments per year.



## INSIGHTS

With the additional pressures that are being placed upon providers to assure that payments are accurate, including appropriate documentation and coding assignment, now is the time to assess your compliance program. Given this threat – what should all healthcare providers be doing to prepare? To help frame this issue, let's discuss our insights related to the compliance elements:

- *Designation of a compliance officer and compliance committee;*

There are many schools of thought regarding this question, my advice is that being the Compliance Officer is not an easy job and not a popular job. You need someone that is knowledgeable about healthcare operations, can be independent from management and is capable to question issues. My observation (having been in the industry for 13 years) is that some organizations try to hire a person that will not challenge management including the Chief Financial Officer, Hospital Counsel, CEO and Board. If you don't have a strong, independent and knowledgeable Compliance Officer who is able to say "no" or question certain behaviors and/or actions, then your organization is at more risk today than ever. Now is the time to have an experienced and knowledgeable Compliance Officer as an independent member of your Management Team!

Your Compliance Committee should be meeting at least quarterly and have exposure to all issues that the Compliance Program is handling. In addition, it should be composed of decision makers that are able to support the organization's compliance efforts. There should be board representation on the Committee.

- *Development of compliance policies and procedures, including standards of conduct;*

With the new timely repayment requirements now in place, these mandates (all repayments being made within 60 days) should be updated in your policies and procedures. Further, if not in place currently, a policy should be prepared to mandate that anyone who has knowledge of overpayments or improper payments must inform the Compliance Officer immediately. A policy delineating that the hiring of all external billing and coding experts/consultants must be approved by the compliance officer should be in place.

- *Development of open lines of communication;*

The elements of your compliance program including your goal to have 100% accurate billing should be reinforced in your regular compliance education sessions to all staff. The 60 day repayment requirement should be communicated to all applicable employees and they should be reminded of your non-retaliation policies and the expectation that all employees report any billing concerns immediately to your assigned personnel (most likely differs in organizations). Too many people have excuses of why not to do compliance education – just do it!

If your Board and Compliance Committee have not been notified and educated with regard to these changes and their impact to your organization, then your Board is not engaged enough in Compliance activities and this needs to be fixed soon.

- *Internal monitoring and auditing;*

Now is not the time to reduce your auditing and monitoring efforts. All compliance programs should have annual work plans developed and approved by the Compliance Committee to assure that risk areas are being reviewed. If capabilities do not exist internally to perform reviews, hire external experts to perform the task.

- *Response to Detected Deficiencies;*

If you are aware of overpayments occurring, make the appropriate repayments within 60 days. Initiate corrective actions in the near term to assure that the inappropriate payments do not reoccur. Do you have any overpayments identified currently that have not been repaid? Who is responsible for making these repayments? How quickly can these repayments be made? If you are not repaying overpayments, what cultural barriers or individuals are making that decision and does your Board know that you are not making these repayments?

- *Enforcement of disciplinary actions;*

If you have individuals that do not follow the policies and direction of the compliance program, corrective actions need to be taken. It is important that you can demonstrate the "teeth in your compliance program" especially in response to people that don't follow the rules.



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## SUMMARY

The realities of the PACA fraud and abuse provisions make it important for providers to embrace compliance and adopt forward-thinking, independent, transparent and robust compliance programs. These efforts and initiatives should place your organization in a pro-active posture to deal with these issues.

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We are pleased to have had this opportunity to provide this information to you. If you have any comments or questions about this issue of *Insights*, please contact me at (484) 844-3327 or [bbissey@ima-consulting.com](mailto:bbissey@ima-consulting.com).

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