



Contemplating Compliance

HOW WELL DOES YOUR COMPLIANCE PROGRAM WORK?

By Kenneth R. Goodin, CPA, CHBME

In January 2005, the Department of Health and Human Services Office of Inspector General (OIG) issued the Supplemental Compliance Program Guidance (CPG) for Hospitals. It augments the initial hospital guidance released in 1998 and continues the OIG's efforts to promote voluntary compliance programs for the health care industry. It also addresses certain risk areas that generally pertain to the hospital setting.

For billing companies, one important component of this CPG is a section on Compliance Program Effectiveness. The OIG has recently indicated that no supplemental CPG for third party billing companies will be released any time soon. It suggested that all interested parties can take a cue from the Supplemental CPG for Hospitals and particularly emphasized the section on effectiveness.

Accordingly, the following review of Compliance Program Effectiveness is taken directly from the Hospital CPG; however, for all references to "hospital" we will substitute "billing company."

Some of the following questions/issues may not apply to your company, depending upon a number of variables, including size, resources, risk areas, specialty, scope of work, etc. Even so, it at least serves as a starting point to reflect on a billing company's compliance program effectiveness.

1. Designation of a Compliance Officer and Compliance Committee

The compliance department is the backbone of the billing company's compliance program. It should be led by a well-qualified compliance officer who is a member of senior management and should be supported by a compliance

committee. The purpose of the compliance department is to implement the billing company's compliance program and to ensure that the billing company complies with all applicable federal healthcare program requirements. To ensure that its compliance department is meeting this objective, a billing company should conduct an annual review of the department. Here are some factors to consider during evaluation:

- Does the compliance department

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have a clear, well-crafted mission?

- Is the compliance department properly organized?
- Does the compliance department have sufficient resources (staff and budget), training, authority, and autonomy to carry out its mission?
- Is the relationship between the compliance function and the general counsel function appropriate to achieve the purpose of each?
- Is there an active compliance committee comprised of trained representatives of each of the relevant functional departments, as well as senior management?
- Are *ad hoc* groups or task forces assigned to carry out any special missions, such as conducting an investigation or eval-

uating a proposed enhancement to the compliance program?

- Does the compliance officer have direct access to the governing body, the president or CEO, all senior management, and legal counsel?
- Does the compliance officer have independent authority to retain outside legal counsel?
- Does the compliance officer have a good working relationship with other key operational areas, such as internal audit, coding, billing, and clinical departments?
- Does the compliance officer make regular reports to the board of directors and other billing company management concerning different aspects of the billing company's compliance program?

2. Development of Compliance Policies and Procedures, Including Standards of Conduct

The purpose of compliance policies and procedures is to establish bright-line rules that help employees carry out their job functions in a manner that ensures compliance with federal healthcare program requirements and furthers the mission and objective of the billing company itself. Typically, policies and procedures are written to address identified risk areas for the organization. As a billing company conducts a review of its written policies and procedures, some of the following factors may be considered:

- Are policies and procedures clearly written, relevant to day-to-day responsibilities, readily available to those who need them, and re-eval-

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uated on a regular basis?

- Does the billing company monitor staff compliance with internal policies and procedures?
- Have the standards of conduct been distributed to all directors, officers, managers, employees, contractors, and medical and clinical staff members?
- Has the billing company developed a risk-assessment tool that is re-evaluated on a regular basis to assess and identify weaknesses and risks in operations?
- Does the risk-assessment tool include an evaluation of federal health care program requirements as well as other publications, such as the OIG's CPGs, work plans, special advisory bulletins, and special fraud alerts?

3. Open Lines of Communication

Open communication is essential to maintaining an effective compliance program. The purpose of developing open communication is to increase the billing company's ability to identify and respond to compliance problems. Generally, open communication is a product of organizational culture and internal mechanisms for reporting instances of potential fraud and abuse. When assessing the ability to communicate potential compliance issues effectively, the company may wish to consider the following factors:

- Has the billing company fostered an organizational culture that encourages open communication without fear of retaliation?
- Has the billing company established an anonymous hotline or other similar mechanism so that staff, contractors, patients, visitors, and medical and clinical staff members can report potential compliance issues?
- How well is the hotline publicized, how many and what types of calls are received, are calls logged and

tracked (to establish possible patterns), and is the caller informed of the billing company's actions?

- Are all instances of potential fraud and abuse investigated?
- Are the results of internal investigations shared with the billing company's governing body and relevant departments on a regular basis?
- Is the governing body actively engaged in pursuing appropriate remedies to institutional or recurring problems?
- Does the billing company utilize alternative communication methods, such as a periodic newsletter or compliance intranet Web site?

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4. Appropriate Training and Education

Billing companies that fail to adequately train and educate their staff risk liability for the violation of healthcare fraud and abuse laws. The purpose of conducting a training and education program is to ensure that each employee, contractor, or any other individual that functions on behalf of the billing company is fully capable of executing his or her role in compliance with rules, regulations, and other standards. Training and education programs should:

- Provide qualified trainers to conduct annual compliance training for its staff, including both general and specific training pertinent to the staff's responsibilities.

- Evaluate the content of the training and education program on an annual basis to ensure that subjects are appropriate and sufficient to cover the range of issues confronting its employees.
- Keep current with any changes in federal healthcare program requirements and adapt the education and training program accordingly.
- Formulate the content of the education and training program to consider results from the company's audits and investigations, results from previous training and education programs, trends in hotline reports, and OIG, CMS, or other agency guidance or advisories.
- Evaluate the appropriateness of the training format by reviewing the length of the training sessions, whether training is delivered via live instructors or via computer, the frequency of training sessions, and the need for general and specific training sessions.
- Seek feedback after each session to identify shortcomings in the training program and administer post-training testing to ensure attendees understand and retain the subject matter delivered.
- Provide the billing company's governing body with appropriate training on fraud and abuse laws.
- Document who has completed the required training.
- Assess whether to impose sanctions for failing to attend training or to offer appropriate incentives for attending training.

5. Internal Monitoring and Auditing

Effective auditing and monitoring plans will help billing companies avoid the submission of incorrect claims to federal healthcare program payors. Billing companies should develop detailed annual audit plans designed to minimize

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the risks associated with improper claims and billing practices. Here are some questions to ask:

- Is the audit plan re-evaluated annually and does it address the proper areas of concern—considering, for example, findings from previous years’ audits, risk areas identified as part of the annual risk assessment, and high volume services?
- Does the audit plan include an assessment of billing systems in addition to claims accuracy in an effort to identify the root cause of billing errors?
- Is the role of the auditors clearly established and are coding and audit personnel independent and qualified, with the requisite certifications?
- Is the audit department available to conduct unscheduled reviews and

does a mechanism exist that allows the compliance department to request additional audits or monitoring should the need arise?

- Has the billing company evaluated the error rates identified in the annual audits?
- If the error rates are not decreasing, has the billing company conducted a further investigation into other aspects of the company’s compliance program in an effort to determine hidden weaknesses and deficiencies?
- Does the audit include a review of all billing documentation, including clinical documentation, in support of the claim?

6. Response to Detected Deficiencies

By consistently responding to detected deficiencies, billing companies can

develop effective corrective action plans and prevent further losses. Consider the following questions when setting up a response program to address deficiencies:

- Has the billing company created a response team with representatives from the compliance, audit, and any other relevant functional areas that may be able to evaluate any detected deficiencies quickly?
- Are all matters thoroughly and promptly investigated?
- Are corrective action plans developed that take into account the root causes of each potential violation?
- Are periodic reviews of problem areas conducted to verify that the corrective action that was implemented successfully eliminated existing deficiencies?

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- When a detected deficiency results in an identified overpayment to the billing company, are overpayments promptly reported and repaid to the fiscal intermediary?
- If a matter results in a probable violation of law, does the billing company promptly disclose the matter to the appropriate law enforcement agency?

7. Enforcement of Disciplinary Standards

By enforcing disciplinary standards, billing companies help create an organizational culture that emphasizes ethical behavior. An effective internal disciplinary effort will receive a yes to the following questions:

- Are disciplinary standards well publicized and readily available to all billing company personnel?
- Are disciplinary standards enforced consistently across the organization?
- Is each instance involving the enforcement of disciplinary standards thoroughly documented?
- Are employees, contractors, and medical and clinical staff members checked routinely (*e.g.*, at least annually) against government sanctions lists, including the OIG's List of Excluded Individuals/Entities (LEIE) 85 and the General Services Administration's Excluded Parties Listing System?

In sum, while no single factor is conclusive evidence of an effective compliance program, the preceding seven areas form a useful starting point for developing and maintaining an effective compliance program. ▲

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