

Hospital Compliance

“Let’s be realistic!”

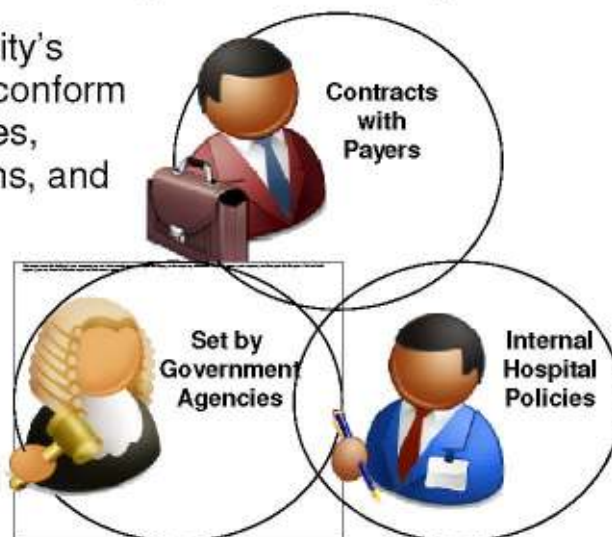


February 18, 2009



What is corporate compliance?

- Your facility's ability to conform to the rules, regulations, and policies.



Should the compliance programs be the same?



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U.S. Sentencing Guidelines

<p>UNITED STATES SENTENCING COMMISSION GUIDELINES MANUAL</p> <p>RICARDO H. HINOJOSA Chair</p> <p>RUBEN CASTILLO Vice Chair</p> <p>WILLIAM K. SESSIONS, III Vice Chair</p> <p>JOHN R. STEER Vice Chair</p> <p>MICHAEL E. HOROWITZ Commissioner</p> <p>MICHAEL E. OWELL Commissioner</p> <p>EDWARD P. REILLY, JR. Commissioner, Co-office</p> <p>DEBORAH J. RHODES Commissioner, Co-office</p>		<p>Part B: Revisions and Superseded Provisions Tables 440</p> <p>CHAPTER EIGHT - Sentencing of Organizations 445</p> <p>Part A: General Application Principles 445</p> <p>Part B: Establishing Standards: Control, Decision, and Effective Compliance Programs 445</p> <p>1. Establishing Basic Standards: Control 445</p> <p>2. Effective Compliance and Other Programs 446</p> <p>Part C: Penalties 447</p> <p>1. Determining the Fine - Criminal Programs 447</p> <p>2. Determination for Non-Criminal Organizations 447</p> <p>3. Application of the Finesheet at a Fine 447</p> <p>4. Department and the Definition Fine Sheet 447</p> <p>Part D: Organizational Structure 448</p> <p>Part E: Special Assessments, Penalties, and Costs 448</p> <p>Part F: Penalties of Defendants - Organizations 448</p> <p>APPENDIX A - Sentencing Index 453</p> <p>APPENDIX B - Selected Sentencing Schedules 474</p> <p>INDEX TO ORGANIZED MATERIAL 480</p> <p style="text-align: center;">SUPPLEMENTARY TABLES</p> <p>APPENDIX C (Volume 2) - Amendments to the Guidelines Manual (Effective November 1, 1997, and earlier) 1</p> <p>APPENDIX D (Volume 2) - Amendments to the Guidelines Manual (Effective November 1, 1999, through December 31, 2002) 1</p> <p>SUPPLEMENT to APPENDIX C - Amendments to the Guidelines Manual (Effective November 1, 1997) 1</p>
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This document contains the text of the Guidelines Manual incorporating amendments effective January 15, 1997; June 12, 1997; October 15, 1997; November 1, 1997; November 1, 1998; November 1, 1999; November 1, 2000; September 23, 2004; November 1, 2004; November 1, 2005; November 1, 2006; May 1, 2007; November 1, 2008.

<http://www.ussc.gov/2004guid/g12004.pdf>

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U.S. Sentencing Guidelines

- Used by judges in assigning a sentence based on a culpability score
- Culpability score determines proper punishment
- Culpability score can be decreased if there is an effective compliance plan
- Lower culpability score results in reduced sentence

U.S. Sentencing Guidelines

2. Factors to Consider in Meeting Requirements of this Guideline

(i) In General.—The formality and scope of actions that an organization shall take to meet the requirements of this guideline, including the necessary features of the organization's standards and procedures, **depend on the size of the organization.**

U.S. Sentencing Guidelines

2. Factors to Consider in Meeting Requirements of this Guideline (cont'd)

ii) Large Organizations.—A large organization generally shall devote more formal operations and greater resources in meeting the requirements of this guideline than shall a small organization.



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2. Factors to Consider in Meeting Requirements of this Guideline (cont'd)

(iii) Small Organizations.—In meeting the requirements of this guideline, small organizations shall demonstrate the same degree of commitment to ethical conduct and compliance with the law as large organizations. However, a small organization may meet the requirements of this guideline with less formality and fewer resources than would be expected of large organizations. In appropriate circumstances, reliance on existing resources and simple systems can demonstrate a degree of commitment that, for a large organization, would only be demonstrated through more formally planned and implemented systems.



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U.S. Sentencing Guidelines

§8B2.1. Effective Compliance and Ethics Program

- (a) To have an effective compliance and ethics program, . . . an organization shall—
- (1) exercise due diligence to prevent and detect criminal conduct; and
 - (2) otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

U.S. Sentencing Guidelines

§8B2.1. Effective Compliance and Ethics Program

- (b) Due diligence and the promotion of an organizational culture that encourages ethical conduct and a commitment to compliance with the law within the meaning of subsection (a) **minimally require the following:**

“The Seven Compliance Elements”

The Seven Elements



Source: Chapter 8 of U.S. Sentencing Guidelines



1. Policies And Procedures

Code of conduct

- Written document distributed to all employees
- Employees should sign to provide evidence of receipt and understanding
- Must maintain evidence of employee signatures
- Keep copies readily available
 - On intranet
 - In Human Resources
 - By Department Managers



Code of Conduct - Resources



Ask peer hospitals or associations

Revise for your hospital specifics!

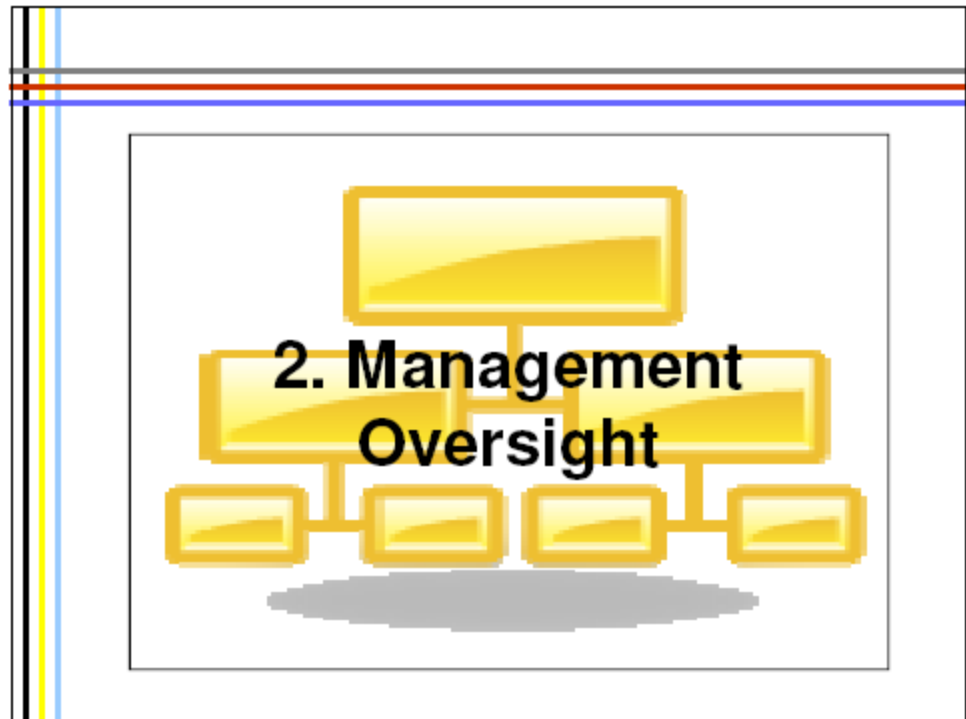


Code of Conduct Principles

- Compliance with laws, rules and regulations
- Conflicts of interest
- Contributions, solicitations, kickbacks
- Discrimination and harassment
- Health and safety
- Recordkeeping, financial controls and disclosures

Code of Conduct Principles

- Confidentiality
- Protection and proper use of company assets
- Reporting illegal or unethical behavior
- Licensing and professional credentialing
- Enforcement and disciplinary action
- Annual acknowledgement



Compliance Officer

- Do not choose
 - CEO
 - CFO
 - Legal Counsel
- Do choose
 - Member of management
 - Very well-organized
 - Not easily intimidated



Compliance Officer

- Is the “officer”, not the infantry!
- Is the staff contact person
- Determines direction of program
- Keeps program moving and on track



Produce
Solutions

Compliance Officer

- Duties include
 - Facilitate and coordinate activities
 - Maintain documentation
 - Meeting minutes
 - Hotline logs
 - Sanction checks
 - Plan meetings
 - Develop work plans



Produce
Solutions

Compliance Committee

- Departmental liaisons
- Meet on a REGULAR basis
 - Monthly
 - Bi-monthly
 - Quarterly
- Responsible for departmental compliance
- Report compliance activities in each area
- Follow up on unresolved issues from one meeting to the next



Compliance Committee

- Don't exclude these representatives!
 - Revenue producing departments
 - Patient Financial Services
 - Medical Records
 - Risk Management
 - Information System



Learn to delegate!

Meeting Discussions

- Internal and external “clinical” audit report findings and recommendations
- Hotline and other compliance calls and resolutions
- Recovery Audit Contractor activities
- Governmental inquiries and information requests



Employees

- Cannot overemphasize importance
- “Eyes” and “ears” of the program
- Encourage involvement
 - Departmental meetings
 - Annual training
 - Suggestion boxes



Document, Document, Document

- Document all compliance activities
- Compliance Officer should maintain summary of findings and corrective action for ALL clinical audits
- Maintain copies of training materials and training schedule
- Maintain logs of compliance complaints
- Documentation of sanction checks

3. Education & Training

Select Type of Training

- How many employees must be trained?
- When should training occur?
- Group versus individual training sessions?
 - Face-to-face
 - Computer modules
- How much do we have to spend?
- How detailed should training be?

Major Training Points

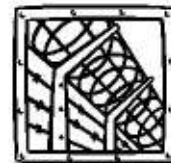
- Try to make interesting
 - Make specific to facility
 - Use pictures of employees
 - Use interesting real-life examples

Major Training Points

- Focus on the Big Picture
 - Code of Conduct
 - Fraud and Abuse (examples)
 - False Claims Act
 - Reporting
 - Non-retaliation
 - Employee as part of compliance team!

Discuss Fraud and Abuse

- Fraud = Intentional
Criminal
- Abuse = Not Intentional
Civil



Federal and State
False Claims Act
must be taught!

False Claims Act

- Filing false or fraudulent claims to the government for payment, or actions that causes wrongful payments to be made.



False Claims Act – Federal & State

U.S. Code Title 31, Subtitle III, Chapter 37, Subchapter III, §3729
Official Code of Georgia, Chapter 4 of Title 49

- Who is liable? Any person who:
 - Knowingly presents or causes to be presented a claim to a government agency a false claim for payment;
 - Knowingly makes, uses or causes to be made or used, a false record or statement to get a false claim paid by a government agency.

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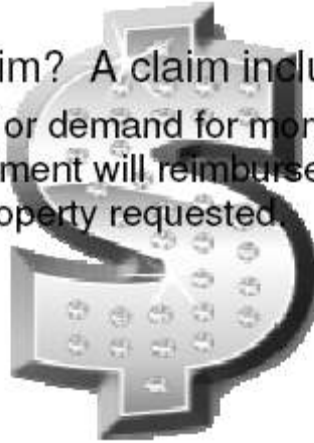
False Claims Act – Federal & State

- What is "Knowingly"? This means a person:
 - Has actual knowledge of the information,
 - Acts in deliberate ignorance of the truth or falsity of the information, or
 - Acts in reckless disregard of the truth or falsity of the information.
- The government does not have to prove that there was specific intent to defraud.

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False Claims Act – Federal & State

- What is a claim? A claim includes:
 - Any request or demand for money or property if the government will reimburse for the money or property requested.



False Claims Act – Federal & State

- Who can file a false claim action?
 - The US Attorney General
 - The State Attorney General
 - A Private Individual



False Claims Act – Federal & State

- There can be no retaliation against a private individual bringing an action in good faith.
 - Any employee who is discriminated against in any way due to his/her lawful involvement in bringing a false claims action will be entitled to all relief necessary to make the employee whole.

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False Claims Act – Federal & State

- Such relief shall include
 - reinstatement with the same seniority status such employee would have had but for the discrimination,
 - 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

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Health Care Fraud

- The FCA can relate to both health care and non-health care entities.
- The FCA can be used to prosecute both companies and individuals.
- The FCA can be used to prosecute any case in which the government proves it did not receive the services for which it was billed.



Provide Examples

COMPANY/PERSON: Office Depot, Inc.

ALLEGATIONS: Sold office supply products manufactured in countries not permitted by the Trade Agreements Act to US government agencies.

AMOUNT: \$4.75 million



COMPANY/PERSON: HealthSouth Corporation

ALLEGATIONS: Submission of false and improper claims for reimbursement and unallowable costs, reclassification of procedures and improper billing

AMOUNT: \$325 million

COMPANY/PERSON: Tenet Healthcare Corp.

ALLEGATIONS: FCA violations arising from Stark Law violations; improper hospital cost report claims for services referred by doctors with whom defendant had prohibited financial relationships

AMOUNT: \$22.5 million



Emphasize Employees' Role

- Understand the laws that affect your job
- Ask questions when things don't seem right
- Report suspected violations of laws and regulations





4. Reporting

Develop a Chain of Command



Drift Occur

Institute a Hotline



- Publicize number
- Respond immediately
- Follow up with caller
- Ensure anonymity of caller

Drift Occur

Code of Conduct

Obligation to Report



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5. Enforcement & STOP Discipline

Enforcement and Discipline

- Include verbiage in Code of Conduct
 - Verified reports of illegal conduct by a Hospital employee will result in **strict disciplinary action**, up to and including **immediate termination** and **referral to appropriate law enforcement** authorities.



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Enforcement and Discipline

- Document enforcement and disciplinary actions
- Apply consistently among all employees!



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6. Auditing & Monitoring

Don't get overwhelmed!



Follow the money

- Medicare Program
- Medicaid Program



UnitedHealthcare

Focus on the “Big Picture”

Compliance with Medicare and Medicaid billing rules

- Patient Financial Services

Medical necessity of services billed

- Case Management and HIM

Adequacy of documentation

- Nursing and HIM

Accuracy of coding

- HIM and CDM

Legality of contracts

- Attorneys



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7. Remedy & Corrective Action

Remedy and Corrective Action

- You must respond appropriately to all criminal conduct AND
- You must take steps to prevent further similar conduct.



Cannot ignore wrongdoing!

In Summary . . .

- You must be organized!
 - Keep annual binders of activities
 - Have an annual plan
 - Don't get caught up in the "small stuff"
 - Be consistent and persistent
 - Delegate and follow-up
 - Use the "seven elements" approach to compliance



In Summary . . .

- Create a compliance atmosphere
- Encourage questions from employees
- Give employees praise for bringing legitimate concerns to your attention.

Compliance is Teamwork!



Encourage and allow your employees to participate!



Questions



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