



## WHAT NURSING FACILITIES CAN DO TO IMPLEMENT A COMPLIANCE PROGRAM

*By Richard Kusserow*

Many nursing facilities have yet to develop and implement an effective compliance program, despite the fact that the Department of Health and Human Services (HHS) Office of Inspector General (OIG) issued compliance program guidance documents. Over the past 12 years the OIG has issued several compliance program guidance documents targeted at specific healthcare providers, i.e., hospitals, hospices, nursing facilities, physician practices and pharmaceutical manufactures. In March 2000 the OIG issued its [first guidance document](#) for nursing facilities, which was later supplemented by [additional guidance](#) in September 2008. However, most nursing facilities have not yet developed an effective compliance program.

For many nursing facilities the cost of hiring an experienced compliance officer who can develop and maintain an effective program is viewed as cost prohibitive. However, provisions under the [Patient Protection and Affordable Care Act](#) (ACA) mandate nursing facilities implement a compliance program as a condition of participation. Therefore, whether nursing facilities want to, or can even afford to, they must implement a program to avoid enforcement actions by HHS. Under ACA, healthcare providers must establish and operate "a compliance and ethics program that is effective in preventing and detecting criminal, civil, and administrative violations [of law] and in promoting quality of care ..." The law states that within 36 months of enactment "a facility shall ...have in operation a compliance and ethics program ...."

March 23, 2012 was the date for nursing facilities to be in full compliance with the mandate; however, this date has come and gone with no enforcement actions by HHS. It has become increasingly perilous for nursing facilities to operate without a compliance program or without the guidance of a compliance officer. Any organization without a compliance program will be in a difficult position when explaining to enforcement agents why after more than 10 years from the issue date of the OIG's original guidance document, they have yet to establish a compliance program.

So then, what should nursing facilities do to get compliant with compliance program requirements? As the former Inspector General of HHS, I have provided some insight. First, expect that CMS mandated compliance programs will build off of the OIG's compliance program guidance documents. As such, while waiting for CMS to finalize the mandate for compliance programs, nursing facilities can begin structuring a program based on OIG's guidelines. This is particularly helpful for current requirements that are part of conditions of participation, such as conducting sanction checks on all employees and others engaged by the facility. Performing sanction checks is a compliance activity that no facility should do without. Without proper screening, inadvertent hiring of excluded individuals can lead to the submission of false and fraudulent claims.

Second, due to the size of many nursing facilities, a part time compliance officer may be all that is needed. A full time compliance officer may be too costly, as well as unnecessary based on the amount of work to be done. On the other hand, designating an existing employee with secondary responsibilities to handle the compliance program does not always work out satisfactory.

Invariably, the primary duties drive out time for the compliance responsibilities; and, quite frankly, healthcare compliance is ever changing, complex, and challenging. One possible solution is to consider using an expert as a Designated Compliance Officer (DCO) to quickly and efficiently build and manage the program. The OIG addresses this option in its compliance program documents, specifically stating that, “[f]or those companies that have limited resources, the compliance function could be outsourced to an expert in compliance.”

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