

the finances do not support external education and training. The benefits of an effective compliance program are not worth the costs and hassles of effective implementation and operation. They are costly, time-consuming, self-incriminating, and equate to an unfounded mandate.

PERSONAL VIEW

I absolutely, without a doubt, believe an organization of any kind needs to have a compliance program. It is a preventive measure and helps to decrease penalties and fines if investigations and fines occur. It provides a high-level oversight to the organization that is necessary for all employees to see in action. It provides policies and procedures for employees to follow. Without them, employees can do whatever they want.

There is education and training in place to keep all employees "in the know." Auditing and monitoring are done to make sure the policies and procedures are followed. Discipline and enforcement take place when necessary. Investigation of issues can bring clarification, education, discipline, and/or enforcement.

It brings direction for the organization and is a positive force for the community to see the organization is working in an ethical forthright manner. It is an insurance policy in some aspects. It is a communication tool, marketing, and public relations tool. It is good business.

As a manager or leader of an organization, I feel it is in the best interest of the organization to have a compliance program. It is the right thing to do ethically, legally, socially, and economically for the organization! So if you don't have a program, begin working on one. It takes time to get one in place, but it will pay off in the long run. You will have an effective program in place if the government investigates you.

And make sure your program is living and breathing in the organization. It should not just be a paper document on the shelf not used. If you are not going to live your program, you may be better off not having one at all.

For all industries, I believe it is a good thing to have a compliance program. It shows forthright ethical activity is going on and ever present in the minds of those that work in an organization supportive of the compliance program. I think the industry of compliance can only grow.

There are many organizations and industries that do not have compliance programs. They need to have education on the benefits. Politically it has to be the right thing to do, especially with all the illegal lobbying, gaming, and other illegal activities taking place in large organizations where accounting fraud is rampant.

Legally, it is the right thing to do to abide by legal rules and regulations. Economically, it is good business to help prevent organizations from fines and penalties that are large dollar amounts and even putting some companies out of business. Socially, the program shows the community you are an organization that strives to do things right and in accordance with the law. It displays a caring attitude toward the customer.

BARRIERS

Barriers are an obstacle to getting the program into place. Especially important is having high-level oversight from the top of the organization. Without this support your program will go no where. You need someone to lead the cause. Without that you will go no where. High-level support and leadership support assists in the discipline and enforcement area. High-level support assists in getting buy-in from employees.

There also may be historical ways of doing things that need change. Change is inevitable with compliance programs and will need high-level support. Expertise on the topic is needed. You may need to bring an external consultant in for this purpose. The organization will need education and training, policies and procedures written, programs to check for excluded employees, do background checks, et etcetera. And for all of these items you will need adequate

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DEFICIT REDUCTION ACT

RICHARD KUSSEROW

Deficit Reduction Act Mandates Education on Fraud and Whistleblowers

Covered Entities Should Review Their Policies and Procedures to Make Sure They are Up-to-Date

On February 8, 2006, the Deficit Reduction Act of 2005 (DRA) was signed into law. Chapter 3 of Title VI specifically focuses on the reduction of fraud, waste, and abuse in the Medicaid program. It provides in part that any entity participating in Medicaid in the amount of at least \$5,000,000 annually must establish written policies providing employees education about false claims recovery and include a discussion of pertinent laws, employee rights, and policies for detecting and preventing fraud, waste, and abuse.

More specifically, Section 6032 outlines three specific requirements for covered entities that include establishing written policies for all employees, management, and any contractor or agent of the entity that provides detailed information about the federal and state False Claims Acts, including whistleblower protections under such laws. The written policies and procedures must include guidance on detecting and preventing fraud, waste, and abuse. The employee handbook (e.g., code or standards of conduct) for the entity must include addressing specific fraud laws, the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

These DRA provisions are an echo of the guidelines set by the Department of Health and Human Services Office of Inspector General Compliance Program Guidance for Hospitals. For those that have fully implemented such a program, the new requirements will not represent much of a problem. For those with a well developed program, they should ensure that all the new requirements have been incorporated. The



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starting place for this should be the written guidance for employees regardless of title (i.e., handbook, code of conduct, standards of conduct, code of business ethics, et cetera).

As result of this legislation, covered entities should consider, among other things, ensuring the existence of policies and procedures related to the following:

- “Whistleblower protection” that includes well defined protection against retaliation and retribution for reporting in good faith suspected violations of law, regulation, policies, and entity code

- Anonymous reporting and protection for those who provide information in confidence

- Guidance on how to act upon information received from employees via the hot line and other means, including proper methods for investigating allegations of fraud, false claims, and other wrongdoing

In addition, a key imperative action step is to make sure that all employees, managements, contractors, and agents receive training relating to these policies, as well as on how to identify fraud and false claims violations.

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Another Look at Business Associate Agreements

Agreements are Necessary for Doing Business under HIPAA Regulations and Should be a High Priority

Perhaps one of the more controversial aspects of the HIPAA privacy standards is the provision added by the Department of Health and Human Services that requires “satisfactory assurance” on the part of a covered entity that any business associate will appropriately utilize PHI provided to it. In other words, the privacy standards apply to business associates in the same way they apply to covered entities. The reason this standard has been a topic of discussion is that it is hard to conclude that it is specifically authorized by HIPAA. Nevertheless, the need for a written business associate agreement (BAA) has become a fact of life for all health care providers.

The first question to be asked is what is a business associate? The answer lies in the regulations themselves (45 CFR 160.103). A business associate is a person or other entity to whom the covered entity discloses individually identifiable health information so that a function or activity for the covered entity can be carried out. The regulations state that the activities of a business associate can include, but are not restricted to, claims processing or administration, data analysis, claims processing or administration, utilization review, quality assurance, billing, benefit management, practice management, and repricing.

The regulations make it clear that individuals who are members of the covered entity’s “workforce” are not business associates. This is applicable not just to employees but also to volunteers, trainees, and other persons whose work is under the direct control of a covered entity, even if they are independent contractors. Also, it is clear that another health care provider is not a business associate if disclosure of PHI is made to that provider for treatment purposes. Examples of persons or organizations that likely could be business associates are auditors, consultants, billing firms, accountants,



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