

Reminder: Nursing Facility Compliance Programs Are Mandated

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Key Points:

- **Emergence from the pandemic will bring back enforcement of the mandates.**
- **All facilities must review their compliance and ethics programs annually.**

The [Affordable Care Act](#) (ACA) amended the Social Security Act (Act) to require the Secretary of the Department of Health and Human Services (HHS) to work jointly with the HHS Office of the Inspector General (OIG) to promulgate regulations for effective compliance programs for skilled nursing facilities and nursing facilities. The [deadline](#) has long since passed for such organizations to adopt and implement the requirements as a condition of Medicare participation. Assessment of compliance by state survey agencies was delayed due to the COVID-19 pandemic. However, this effort is likely to begin as the pandemic subsides and initially focus on nursing homes identified in the Centers for Medicare and Medicaid Services' Special Focus Facility program. Such facilities may be subject to more severe enforcement actions.

The nursing facility compliance program [requirements](#) are outlined in eight elements that align with past OIG compliance guidance. They include:

1. Establishment of written compliance standards, policies, and procedures that are reasonably capable of reducing the prospect of criminal, civil, and administrative violations of the Act.
2. Assignment of overall responsibility to oversee the compliance program to individuals in high-level positions.
3. Sufficient resources and authority for the designated individuals to reasonably ensure compliance with the standards, policies, and procedures.
4. Exercise of due care not to delegate discretionary authority to individuals who the facility knew, or should have known, have been excluded from federally financed health care programs.

5. Effective communication of standards, policies, and procedures through mandated participation in training programs or by disseminating information that explains, in a practical manner, what is required under the compliance program.
6. Reasonable steps to achieve compliance with the program's standards, policies, and procedures, such as utilizing monitoring and auditing systems, implementing a reporting system, and ensuring the integrity of reported data.
7. Consistent enforcement of the organization's standards, policies, and procedures through appropriate disciplinary mechanisms.
8. Efforts to respond appropriately to detected violations and prevent further similar violations.

In addition, all facilities must review their compliance and ethics programs annually and revise them as needed to reflect legal, regulatory, and operational changes. Organizations with five or more facilities are subject to additional requirements.

Once facilities implement these elements, their challenge is to evidence that the compliance program is operating as designed. The worst-case scenario for a nursing facility would be to have a compliance program that is outlined in writing but does not function in practice. This scenario would indicate that the organization has knowledge of the requirements but is not following them. A "sham" program would be considered worse than having no program at all.

Facilities that want to focus on meeting the mandated standards have available options, including engaging experts to help build the program. Smaller organizations may choose to outsource the responsibility of building and managing the compliance program to an external Designated Compliance Officer. Organizations that have begun to build their compliance programs can engage independent experts to conduct "gap analyses" or effectiveness evaluations to gather evidence of program progress and identify opportunities for improvement.

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