

Behavioral Health Enforcement

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Key Points:

- **Rapid increase in behavioral health demand, funding, and enforcement**
- **Examples of enforcement actions**
- **Steps to mitigate risks**

Following the COVID-19 pandemic, there has been a great spike in behavioral health services and a corresponding rise in costs and enforcement actions. This, coupled with the fact that behavioral health also involves the use of abusable drugs, such as opioids, has turned this sector into a major focus of enforcement interests by the DHHS OIG and DOJ. Recent enforcement actions by the OIG and DOJ make it clear that failure to comply with federal regulations on billing for behavioral and mental health services can be costly. The OIG is using risk assessment and data analytics to identify, monitor, and target potential fraud, waste, and abuse involving behavioral health. The result has been a significant increase in enforcement actions for providers found violating the False Claims Act. Examples of this include the following issues:

- Admitting patients to residential treatment that did not require that level of care
- Billing for services not rendered
- Inappropriately using complex codes to obtain higher reimbursement
- Submitting claims for ABA services that were either excessive or not provided
- Collusion with an inappropriate treatment-seeking or kickback-motivated patient
- Submitting claims for services provided for more time than is feasible in a given day or week
- Improper use of drugs (e.g., opioids)
- Billing for individual therapy when a patient was treated as part of a group therapy session
- Billing for improper and/or excessive lengths of stay
- Improperly using physical and chemical restraints and seclusion
- Failing to develop and/or update individual assessments and treatment plans for patients
- Improper and inadequate discharge planning documentation
- Failing to provide required individual and group therapy services
- Submitting false claims for medically unnecessary inpatient psychiatric admissions

Maintaining compliance with the ever-changing legal, regulatory, and business environment is a major challenge. Issues with documentation, billing, treatment plans, and medical necessity issues require continuous attention. This includes regular compliance risk assessments, along with ongoing monitoring and auditing that will ensure processes, internal controls, and policies are being followed. Identified weaknesses will suggest the need for additional staff training or revisions to existing policies and procedures. Auditing activities, including billing and coding compliance, can be conducted internally by the compliance department or externally by an independent third party. The following are things Compliance Officers should consider doing:

- Develop, review, and update high-risk related policies and procedures
- Continuously monitor clinical assessments and planning processes
- Audit documentation, coverage, and coding
- Monitor policy compliance on the use of restrictive restraints
- Ensure written admission criteria for both Medicare and non-Medicare patients
- Ensure accurate billing and coding documentation
- Review the quality and appropriateness of provided services and treatment
- Conduct regular assessments of staff competencies needed to care for mental health patients
- Identify and analyze “near miss,” incidents, and actual events
- Ensure employee complaints are taken seriously to avoid them becoming whistleblowers
- Assess risk areas (e.g., ordering labs, referral relationships, gift policies, marketing strategies)
- Ensure the privacy of patient information is protected
- Confirm state and federal regulations surrounding telehealth are being followed
- Verify evidence of patient medical necessity for psychiatric admissions
- Review referral arrangements for compliance with Anti-Kickback and Stark Laws
- Verify staff are trained on compliance with high-risk compliance issues (e.g., billing and coding)
- Corroborate required documentation that evidences compliance with laws and guidelines
- Document medical records to ensure compliance with applicable requirements
- Review medical necessity to validate the provision of behavioral health services
- Engage experts with in-depth knowledge to conduct an independent compliance review

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About the Author

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.