

How Effective Is Your Plan?

Leverage metrics put forth by the Office of the Inspector General to measure the efficacy of your compliance plan

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THE SEVEN KEY ELEMENTS necessary for creating a compliance plan were featured in a *Compliance Corner* article in the January *O&P Almanac*. However, simply incorporating these seven elements will not guarantee that your compliance plan will be effective. The plan must be evaluated from time to time to ensure that its core components still meet the goals of your organization and, more importantly, ensure the plan is being adhered to and updated as needed.

In early 2017, the Office of Inspector General (OIG) for the U.S. Department of Health and Human Services held a summit with several compliance professionals from the Health Care Compliance Association, representing a wide range of health-care industries, to discuss ways to measure the effectiveness of a compliance plan. This workgroup developed a list of more than 400 metrics (delineating “what

to measure” and “how to measure”) that can be used to determine the effectiveness and usefulness of your current compliance plan.

The use of all 400 metrics is not practical—it is not expected that you would apply all 400 metrics to your compliance plan. The purpose of the extensive list is to provide ideas, or a starting point, from which to evaluate and test your compliance plan. Your facility’s effectiveness measurement process, and the staff members involved in implementing it, should be tailored to your company—just like your compliance plan is tailored to your company.

This month’s *Compliance Corner* provides a brief recap of the seven elements of a compliance plan and explains some of the metrics suggested by the workgroup. Be sure to review the full findings of the workgroup on the OIG website, <https://oig.hhs.gov/compliance/101>.

ELEMENT

1

Written Policies and Procedures

The first step in creating a compliance plan is to develop your company’s standards of conduct, or the broad values that you wish for your organization to follow, and address specific areas that are prone to potential fraud or abuse. This would include such general areas as claims development and the submission process (establishing medical necessity, orders, proof of delivery, selection of codes, etc.), guidelines about kickbacks/self-referrals, marketing, and retention

of records, among other things.

The workgroup created 62 metrics for testing whether the standards, policies, and procedures of your compliance plan are adequate, understandable, enforced, accessible, and updated.

For example, to test the accessibility of your compliance plan, you could survey employees to see how many know what your policies and procedures are, and if they know where to find a current copy of these rules. If the document is on your website or company server, does the link still work, and are the files still accessible?

Can you track how often the web page is accessed? Be sure to review the language of your policies and procedures and make sure the verbiage is straightforward and easy to understand.

To test the quality of your compliance plan, try auditing the plan by checking when it was last updated and evaluating if it is still relevant. Are you keeping a record of all of the changes made to the policy and documenting when those changes are made? Do staff agree that the policies and procedures assist them in doing their assigned jobs effectively? Ask employees to identify any policies that need to be created that may not be in effect, or policies that should be updated or removed.

ELEMENT

2

Program Administration

The next step is to designate one employee to be the compliance officer and/or leader of a facility “compliance committee.” This individual must serve as the primary point person for all compliance activities and be responsible for implementing, updating, interpreting, and enforcing the company’s compliance program.

There are 68 metrics that can be used to assess whether the compliance officer/committee is effectively administering your compliance plan. These metrics include evaluating the involvement of the board of directors, the resources allocated to the compliance plan, the use of risk assessments, and the overall company’s/organization’s commitment to compliance—including but not limited to employee incentives/promotions.



This would include testing the perception and role of the compliance officer and program. Are the compliance staff considered “solution facilitators” or the “organizational police force”? Also, consider interviewing the compliance officer to determine if he or she is supported in carrying out the duties of the job, and if he or she needs any additional support to fulfill those duties. Is your compliance officer continuing his or her

education/certification or enhancing his or her abilities and knowledge in other ways? Does your company have a “culture of compliance”? Are you engaging in activities to promote and reward compliance? Do you have incentives to encourage employees to adhere to the compliance plan, and is compliance part of your performance reviews? Ask your staff if the compliance officer/committee has an impact on how they do their jobs.

Health Care Compliance and Ethics Week, November 5-11



AOPA HAS PARTNERED WITH the Health Care Compliance Association to provide resources for members—including many at no cost—to facilitate participation. This week-long focus on compliance and ethics will give your organization the opportunity to introduce and reinforce the compliance and ethics standards your employees are expected to meet. Participation may contribute to positive perceptions from the broader community about your facility’s commitment to ethical business practices. Taking part in Health Care Compliance and Ethics Week provides an opportunity to thank employees and create a meaningful dialog. It’s not only the right thing to do; it’s just common sense to have an effective written compliance and ethics program for your business.

AOPA will make available tools to assist in your participation. Use the press release template AOPA has developed to let your community know of your organization’s commitment. AOPA will be sending out daily compliance tips and the chance to win prizes, and will offer special educational opportunities, during Health Care Compliance and Ethics Week.

Posters and giveaways are available to keep your staff engaged. If you don’t have a compliance officer on staff, this is the opportunity to assign that responsibility. Register employees for one or all of the online seminars:

Gift Giving: Show Your Thanks & Remain Compliant, Wednesday, Nov. 8

Compliance and Ethics Association’s hosted webinar, Thursday, Nov. 9
(free for AOPA members)

Teaching Professionalism and Ethics During Residency, Friday, Nov. 10
(free for AOPA members)

Many materials are available on a complimentary basis. This is a cost-effective opportunity to instill a sense of a commitment to a value system documented by your written compliance and ethics program that is a win/win for your company and for your patients. Tools to celebrate the week are available at bit.ly/aopaethics. See the order form on the website to access these resources.

ELEMENT
3&4

Training & Lines of Communication

Two of the seven elements of a compliance plan—implementing training/education programs for all employees and developing effective lines of communication—were combined into one element by the workgroup for the purpose of creating the metrics to test the plan’s effectiveness.

With durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) compliance plans, it’s important to implement education and training programs for both new hires and existing employees, including the compliance officer and management staff. These programs should be routinely revamped to align with current trends. In addition, effective and open lines of communication should be in place, both internally and externally, between the compliance officer/committee and all people associated with the company. Open communication is key to ensuring employees receive clarification about the company’s policies and procedures and are encouraged to report potential incidents of fraud and abuse



There are 49 metrics to use in testing whether staff and employees have received appropriate training, to confirm whether training is updated based on regulatory changes or identified compliance failures, and to determine whether there are effective and open lines of communication.

Regarding lines of communication, for example, the workgroup metrics suggest that you conduct focus group discussions with employees regarding the effectiveness of compliance program

messaging. Do employees know and understand the compliance officer’s or committee’s key message? How accessible is the compliance staff, and what is the perception of the staff? Do employees know how to report concerns, and are their concerns being addressed and taken seriously?

One of the metrics for testing the effectiveness of training is to review your training plan and determine if it is the best way to share information with employees. Are the compliance materials being presented in a manner suitable for all employees? How would employees like to have the material presented?

Be sure to audit all educational materials used to train new hires over the last two years; is the material still valid, or is it stale? Has everyone been trained—and trained in a consistent manner?

ELEMENT
5

Internal Auditing and Monitoring Systems

The next element of a compliance plan is to monitor ongoing operations to ensure that policies and procedures are being observed and that necessary corrective action can be taken to correct any deficiencies or risk areas.

This element has the most metrics assigned to it: 77 metrics to evaluate if a compliance plan has an appropriate auditing/monitoring/reporting system in place to handle issues after they are identified.

Consider the following when evaluating your systems:

- Do you have a written escalation process, and is it clear when an issue must be escalated and/or reported to the government?
- Review your methods in creating your audit plans. What documents or standards do you use when auditing?
- Examine your corrective action plans (CAPs). Are people following through with the CAPs, in a timely manner? Does a CAP typically correct the issue at hand?
- Finally, consider inviting an outside party to review your methods/audits; audit the auditors.

ELEMENT
6

Disciplinary Directives



A compliance plan must include written guidance regarding disciplinary action for anyone, regardless of position in the company, who has failed

to follow the company’s standards of conduct and written policies and procedures for compliance.

The workgroup identified 34 metrics that may be used to test whether employees understand the consequences for noncompliance, whether discipline is fair and consistent, and whether past noncompliance is considered when employees are promoted.

To review the fairness, consistency, and knowledge of your company’s disciplinary policy, the metrics suggest reviewing the policy and answering these questions: Is the policy consistently followed? Is the disciplinary action in proportion to the offense? Is there consistency for similar matters? You also may survey employees to make sure they know and understand the disciplinary actions associated with noncompliance.

ELEMENT
7

Response and Corrective Action

A compliance plan must include a standardized process that can be used by your compliance officer/committee, or any other management official, for investigating potential violations of codes of conduct or other areas of noncompliance. This process should allow you to act rapidly and correct the action through the proper channels.

The workgroup created 71 metrics for measuring and reviewing such things as how investigations should be conducted, the independence and competency of investigators, how issues are escalated, how results are communicated within the organization, and more.

Some suggestions include checking for the presence or completion of a compliance log. Does your facility

have a log that lists the actions taken in each investigation, and are there supporting files for each log entry? Is there a pattern of offenses that needs to be reported? You also may determine whether and how investigation results have been documented and reported to senior leadership.

The workgroup additionally developed 40 metrics to be used to test how individuals/entities should be evaluated for possible exclusion, conflicts of interest, their understanding of compliance obligations, and other issues; and to evaluate how individuals/entities respond to issues found during these evaluations. While this area of evaluation was not separately identified as an element of a DMEPOS compliance plan, it is part of other health-care compliance plans; since the features of this element are found in the seven elements of a DMEPOS compliance plan, these metrics are worth mentioning. Some of the metrics include the suggestion that employment files should be audited to ensure

documentation supports that newly hired employees were screened before they began working at the company. It also is suggested that annual meetings be held with the individual responsible for conducting the screening; during these meetings, the document retention processes to ensure documentation of the screening function should be reviewed, as should response to findings and whether corrective actions are adequately maintained.

In addition to using these 400-plus metrics to evaluate the effectiveness of your company's compliance plan, you also may reference the Department of Justice's (DOJ's) updated guidance for federal prosecutors on how to evaluate compliance programs. Taken together, the OIG metrics and the DOJ guidance document, www.justice.gov/criminal-fraud/page/file/937501/download, provide a strong framework and starting point for compliance program evaluation.

Following the steps suggested in this article will benefit your facility in many

ways. Companies with compliance programs are only eligible to receive cooperation credit under the U.S. Sentencing Guidelines if their compliance programs are considered effective. More importantly, companies with effective plans increase their chances of identifying issues early enough to ensure that problems don't arise and may be well-positioned to prevent government intervention or investigations. **CP**



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