Why Your Agency Needs a Compliance Program

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Fraud and Abuse
Fraud – Making false statements or representations of material facts in order to obtain some benefit or payment for which no entitlement would otherwise exist.

Abuse – Describes practices that result in unnecessary costs to the Medicare or Medicaid program.

Intent – "Knows or Should know"

Federal Civil Sanctions

- Civil Money Penalties
  - Penalty for each claim submitted or cost report
  - Exclusion from Medicare and Medicaid

- Civil False Claims Act
  - Whistleblower Suits

Federal Criminal Sanctions

1. False Claims
2. Mail or Wire Fraud (documentation in response to medical review)
3. False Statements (altering nurses’ notes)
4. Duplicate Billing or cost report errors
5. Medicare-Medicaid Anti-Kickback Statute – giver and receiver are liable
6. Conspiracy to defraud the United States
7. Theft, embezzlement, or diversion of public monies
8. Knowingly concealing to disclose information

Federal Administrative Sanctions

1. Exclusions from participating in Medicare and Medicaid
2. Suspension of payment
3. Pre-payment audit
4. Termination of existing Medicare provider agreement.

State Sanctions

1. Self-referral prohibition
2. Anti-Kickback laws
3. Professional Misconduct
4. Theft and Larceny
5. Medicaid False Claims
6. Healthcare False Claims
**Whistleblowers and Hospice**

- The law provides whistleblowers with a substantial financial incentive to initiate lawsuits, as they may receive up to 30% of any amount that the government recovers from the provider, depending on the whistleblower's role in the case.
- Most commonly, whistleblowers are former employees of the hospice, but any private party with knowledge of the alleged false claims may act as a whistleblower. In one case, a hospice filed an FCA lawsuit against a competing hospice.

**Whistleblowers’ Charges according to the False Claims Act**

- Admission of ineligible patients
- Admission of patients with long lengths of stay and ill-defined diagnoses
- Delays in discharging ineligible patients
- Backdating physician certifications or recertifications of terminal illness
- Providing kickbacks to nursing home employees
- Paying incentive compensation that resulted in the retention of ineligible patients
- Offering to provide free goods or services to Medicare beneficiaries to encourage them to enroll in hospice
- Alteration of clinical documentation to portray the patient as eligible for hospice
- Changing the patient’s hospice diagnosis to support hospice eligibility

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**What is a Compliance Program?**

Program designed to ensure that hospice remains in compliance with federal and state laws and regulations for the provision of hospice services, and that hospice’s billing is accurate, complete, and correctly documented.

**Standards of Conduct**

1. **Comply with all laws and regulations**
   - In order to achieve compliance with all laws and regulations, Agency Representatives must adhere strictly to the Agency’s policies and standards.
   - If an Agency Representative is unsure whether certain conduct complies with the laws, regulations, or rules or with the policies or standards of the Agency, they must seek guidance from the supervisor or the Compliance Officer.
   - Ignorance of the law will not be tolerated.

2. **Compliance with all Agency policies**
   - Compliance includes billing, administration, human resources, and clinical procedures.
   - Agency Representatives are expected to treat their colleagues and subordinates with respect and dignity. No form of discrimination will be tolerated.

3. **Proper Claim Development and Reimbursement documentation**
   - Examples of False Claims are:
     - Billing for patients that do not meet the hospice criteria of 6 months or less, i.e. chronic versus terminal.
     - Billing for a higher level of care, i.e. documentation which does not support the continuous care or inpatient provided.
     - Billing for an incorrect location, i.e. claims should be for where patient lives, not where the hospice agency is located.
Standards of Conduct

• Billing for inadequate or incomplete services rendered by the IDT, i.e. inadequate assessment by the team resulting in services being provided to a patient who no longer is appropriate for hospice.
• Billing in spite of under-utilization, i.e. Agency’s denial of patient’s needed care, in order to keep costs low.
• Insufficient oversight of patients, i.e. at recertification: lack of in-depth review keeps patients on services when they should have been discharged.

Standards of Conduct

• Billing for services provided by unqualified or unlicensed clinical personnel, i.e., allowing licenses to expire.
• Inadequate management of subcontracted services which results in improper billing.
• Arrangement with another healthcare provider who is also submitting claims for services that should be covered by Hospice, i.e. referring to home health to provide services hospice should be covering under the Medicare Hospice Benefit.

Standards of Conduct

• submitting a claim containing information that is false, i.e.
  • False dating of amendments to nursing notes
  • Forged and/or untimely physician certifications, and/or narratives, and/or face to face encounters.
• Not complying with applicable requirements for verbal orders:
  • Make an entry in the medical record as soon as a verbal certification of terminal illness is received.
  • Verbal orders may only be accepted by specific authorized individuals. Follow protocol.
  • Verbal orders will be recorded, dated and signed.

Standards of Conduct

• Nursing Facility Issues:
  • Submitting a claim when overlap in services with the nursing facility has occurred, which saves either provider costs/services, i.e., hospice providing continuous care when not required by patient.
  • Providing hospice services prior to contract being finalized.
  • Improper relinquishment of core services or professional management to facilities, i.e., providing hospice aide services in a manner which saves facility from having to provide them to that patient.

Standards of Conduct

• Knowing misuse of provider numbers which results in improper billing, i.e., transferring a patient from one hospice to another within the same company to circumvent hitting caps.
• Misusing social security or Medicare symbols, emblems, or names in marketing.

Standards of Conduct

B. Billing and Reimbursement
• All bills will be accurate and reflect current payment methodologies.
• Patients and other customers will receive timely bills and all questions regarding billing will be answered.
• Any overpayments made by a third party payor will be repaid in a timely manner.

C. Government Customers
• Agency provides services to patients on behalf of the Medicare and Medicaid programs.
• Licensing requirements must follow the Medicare conditions of participation.
• All employees must be knowledgeable of, and comply with, applicable laws, rules, and regulations of these government agencies.
Standards of Conduct

4. Referral Source Relationships
   A. Anti-kickback Issues:
      • Do not offer a “kickback” to anyone to induce them to use hospice or refer a patient.
      • Do not offer a fee or gifts to a physician for referrals;
      • Do not provide items or services for free or below fair market value to beneficiaries of Medicare/Medicaid;
      • Do not provide staff for free or below fair market value to physicians, hospitals, or nursing facilities.

Standards of Conduct

B. Responding to late hospice referrals:
   • When hospice referrals are late, patients may be unnecessarily denied access to the Medicare Hospice Benefit; hospices may have to admit at the costliest stage of the terminal illness; and quality of care may be affected. Agency will work closely with physicians to educate and remind them of the sensitivities and risks associated with untimely referrals.

Standards of Conduct

5. Dealing Honestly with all Internal and External Customers
   A. Marketing and Advertising Activities:
      • Offer only factual information to the general public.
      • Do not utilize prohibited or inappropriate conduct, i.e., offering free gifts or services.
      • Do not use high-pressure marketing to ineligible beneficiaries.
      • Do not review a patient chart, such as in a nursing home, unless that patient is receiving hospice services from this agency.
      • Sales commissions should not be based upon length of stay.

Standards of Conduct

B. Competitive Analysis:
   • Agency will not enter into agreements to fix prices or reduce price competition.
   • Representatives will not provide proprietary business information to competitors, nor obtain proprietary information from them.
   • Supervisors will assure that any information obtained is done so only in a proper fashion.

Standards of Conduct

6. Employee/Employer Performances
   A. Charging of Costs/Time Card Reporting:
      • Representatives will submit complete, accurate, and timely timesheets.
      • Supervisor will assure that time worked or expenses reimbursed are accurate.
   B. Hiring of Federal and State Employees:
      • Supervisors will obtain prior clearance from the Compliance Officer to discuss possible employment or consulting opportunities with any current or former government employee (military or civilian).

Standards of Conduct

7. Compliance with Patients’ Bill of Rights
   Representatives will comply with the Patients’ Bill of Rights.
   A. Discriminatory Admit/Discharge of patients is not acceptable, i.e.:
      • Not informing the patient about hospice prior to their electing the Medicare Hospice Benefit. Patient has a right to be informed as to what hospice is.
      • Admitting patients who are not terminally ill. There is a difference between “chronically ill” and “terminally ill”.
      • Applying pressure on a patient to revoke when the care has become too expensive.
Standards of Conduct

B. Advance Directives:
• Representatives will comply with all policies and federal and state laws governing advance directives.

C. Confidential Information:
• Our professions require that we gather large amounts of personal information about patients and their families. Therefore, we will carefully avoid any unwarranted invasion of the patient's right to privacy.

Standards of Conduct

C. Confidential Information continued:
• To protect sensitive information, Representatives are expected to:
  • Limit access to patient information to the extent required by duties and permitted by law;
  • Use only legitimate means to collect patient information and, when possible, obtain it directly from the patient;
  • Refrain from revealing any patient information unless supported by legitimate business or patient care purposes; and
  • Refrain from removing or sending a patient's medical record, or a copy of such record, from a designated storage facility or department without the authorization of a supervisor or other designated official.

Standards of Conduct

8. Using Agency Resources Properly
A. Making Political Contributions, i.e.:
• Representatives may not contribute or donate the Agency's funds, products, or services to any political cause, party or candidate without advance written approval from the Compliance Officer.
• Representatives may make voluntary personal contributions.

B. Providing Business Courtesies to Referral Sources or other Customers, i.e.:
• Will not offer entertainment, meals, transportation, etc. to encourage business.
• Will not provide any referral source with gifts or promotional items of more than nominal value (pens).

Standards of Conduct

C. Charitable Contributions:
• All charitable contributions received from vendors must directly benefit the Agency. No checks will be made out to an individual.
• Agency will not accept any donations that are in conjunction with a marketing effort or sales promotion.
• Agency will not accept any donations that require the Agency to use the donation to purchase supplies.

D. Coordination of volunteers:
• Representatives will pay attention to compliance issues associated with volunteers, such as screening, training, disciplining, and monitoring.

Standards of Conduct

9. Avoiding Abuses of Trust
A. Conflict of Interest
• For the Agency to conduct its business effectively and to promote confidence in the integrity of its Representatives, the highest standards of loyalty and ethics must be maintained. Any personal interests which conflict with those of the Agency, or which might influence or appear to influence their judgment in performing their duties, should be avoided.
• Representatives must disclose, before taking action, any facts or circumstances that may involve a conflict of interest. Such disclosure can assist Representatives in resolving honest doubts as to the propriety of the particular course of conduct.

Standards of Conduct

B. Insider Trading:
• No employee of the Agency shall trade in the securities of any company, or sell any property or assets, on the basis of non-public information acquired through employment at the Agency, whether such information comes from the Agency or from another company with which the Agency has a confidential relationship.

C. Acceptance of Business Courtesies:
• Employees may not accept any gifts or promotional items of more than nominal value as it may appear to be offered in exchange for any type of favorable treatment or advantage. Gifts of more than $50 value must be reported to the Compliance Officer.
Standards of Conduct

D. Safeguarding the Agency’s Restricted Information:
   • Representatives must not, during or after the term of their employment with the Agency, either make improper use of or disclose any such information to anyone, for any reason or purpose whatsoever.
   • Representatives will limit their access and use of business and corporate records to that required to perform duties, and will not remove business or corporate records, or copies of such records, from the Agency without the authorization of the Supervisor.

Designing a Compliance Program

1. Need Compliance Standards and Policies and Procedures
2. Assign oversight responsibilities – Compliance Officer
3. Provide compliance orientation upon hire and annually for all staff, volunteers, and contractors.
4. Establish processes to detect and prevent offenses

5. All staff, volunteers, and contractors should sign:
   ■ Compliance Pledge
   ■ Conflict of Interest
6. Make staff aware of seriousness of enforcement and discipline
7. Set up process for reporting compliance issues, i.e., confidential hotline number
8. QAPI program include monitoring and auditing for standards
9. Respond and prevent

Benefits of A Compliance Program

■ Assure compliance with Federal and State rules and regulations
■ Create a centralized source for distributing information regarding fraud, waste and abuse
■ Demonstrate to employees and the community the strong commitment to honest and responsible conduct
■ Identify and prevent illegal and unethical conduct
■ Improve internal communication
■ Encourage employees to report potential problems
■ More quickly and accurately react to employees’ compliance concerns
■ Improve quality, efficiency and consistency of patient care

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