Maximize Compliance Today and Beyond

Elizabeth Parker, JD, BS, RRT

Scott Gima, MHA, LNHA, BSN

Management Performance Associates

44th Annual LeadingAge Missouri Annual Conference and Exposition

Agenda

Compliance Update

- Identify the latest compliance risks and enforcement trends
- Evaluate strategies for responding to new compliance risks
- Learn ways to keep your compliance program current

Recent Trends in Enforcements

Elizabeth Parker, JD, RRT
Scott Gima, MHA, LNHA, BSN
Management Performance Associates

Compliance is not just for healthcare

Compliance is mandatory in certain businesses and industries who rely on the government for funds.

- Banking
- Military Contractors
- Health Care Providers
- Grant recipients

Mandatory LTC Compliance

- March 23, 2013 - Section 6102(b) of PPACA
- Medicare/Medicaid Condition of Participation Section 6401 of PPACA

Patient Protection and Affordable Care Act

Investigation Trends- OIG Work Plans

- FY 2013
- Adverse Events in Post-Acute Care
- Medicare Requirements for Quality of Care
- State Verification of Deficiency Correction (NEW)
- Oversight of Poorly Performing Facilities
- Hospitalizations of Nursing Home Residents
- Questionable Billing Patterns for Part B
- Oversight of the MDS Submitted by Long-Term-Care Facilities (New)

2013 Work Plan (Cont.)

- Nursing Facility Services—Communicable Disease Care (New)
- Relationship/Financial Arrangements w/ Hospice & Hospice Marketing Practices
- Payments for Services After Beneficiaries' Death (New).
- 64 page document:
- http://oig.hhs.gov/reports-and-publications/archives/workplan/2013/Work-Plan-2013.pdf

2013 Work Plan (Cont.)*

- General Inpatient Care
- Payments for Incarcerated Beneficiaries (New)
- Payments for Alien Beneficiaries Unlawfully Present in the United States on the Dates of Service (New)

* See OIG Work Plan for exhaustive list

2012 Work Plan

- Safety and Quality of Post-Acute Care (New)
- Nursing Home Compliance Plans (New)
- Oversight of Poorly Performing Nursing Homes
- Emergency Preparedness and Evacuations During Selected Natural Disasters
- Medicare Part A Payments to Skilled Nursing Facilities

2012 Work Plan (Cont.)*

- Hospitalizations and Re-hospitalizations of Nursing Home Residents
- Questionable Billing Patterns During Non-Part A Nursing Home Stays (New)
- Hospice Marketing Practices and Financial Relationships with Nursing Facilities (New)
- Medicare Hospice General Inpatient Care

* See OIG Work Plan for exhaustive list

Investigation Focus

- November 2012 OIG Report – inappropriate payments, **especially for therapies**
- SNFs billing for higher paying RUGs
- Accuracy of MDS items
- RACs have also started to follow suit on examining therapy, requesting additional documentation from providers to perform a test claim sample of Medicare Part A claims involving ultra high therapy RUGs.

Healthcare Fraud Investigators

TRENDS

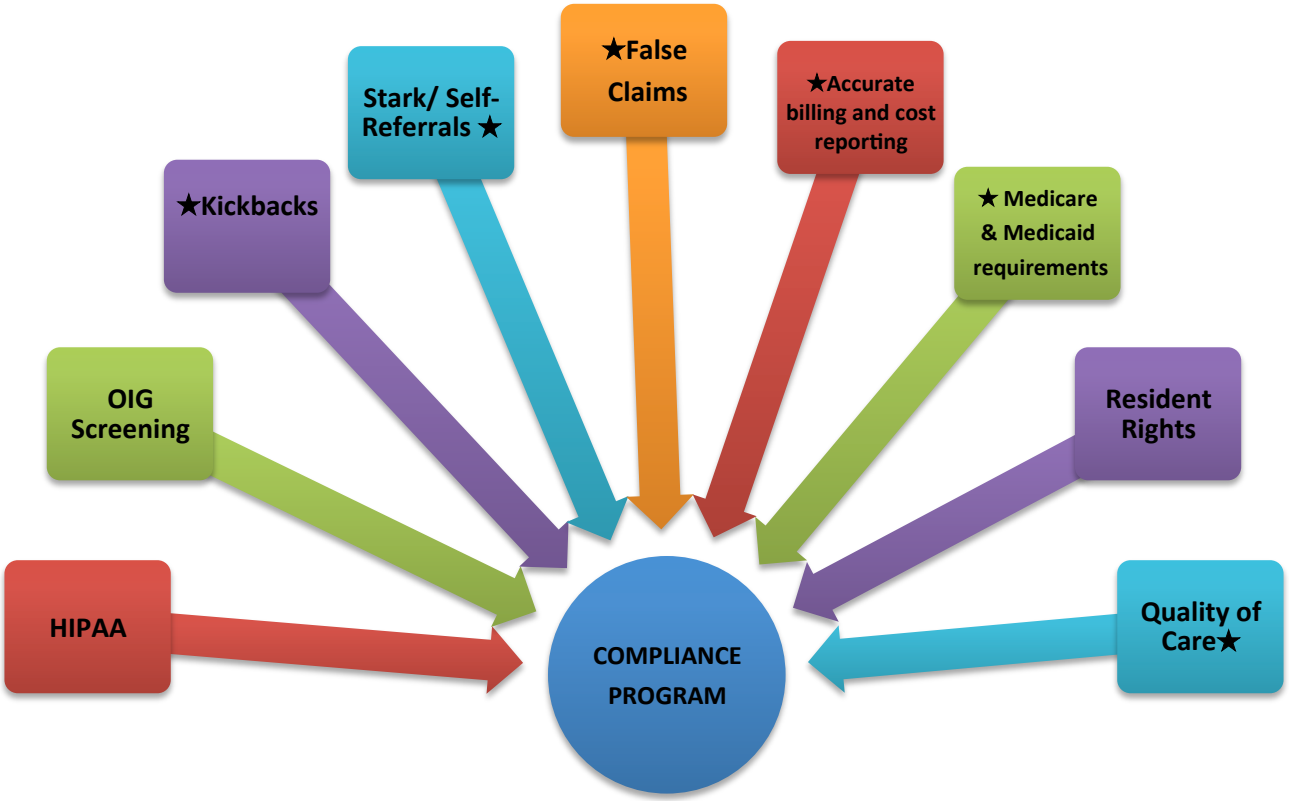
- HHS, OIG, DOJ, US Attorney ↑, but…..
- Whistleblowers (Qui Tam) and Attorneys ↑↑
- MAC's, FI's *
- Insurance Companies ↑
- State and Federal Law Enforcement, i.e., FBI, HEAT Strike Forces in 9 locations↑

HEAT-Strike Force Case: Five physicians and two hospital executives arrested for kickback scheme

Doctors transported NH residents to a hospital in Chicago, sedated them, performed tracheotomies and penile implants.

Healthcare Fraud Investigators (cont.)

- Food and Drug Administration
- ZPIC's (Zone Program Integrity Contracts)
- Organized Senior Volunteers (SMP's)
- Office of Civil Rights (HIPAA)



Which of the 7 areas are being reported? All of them, but…

Scott Gima, MHA, LNHA, BSN
Vice President of MPA

Therapy – Employee Screening

April 2011 Rehab Co. agreed to pay $1.5 million to resolve its liability for allegedly submitting claims to Medicare and Medicaid for services provided by an unlicensed speech therapist between October 2006 and June 2010. ST gave forged licenses and documentation in order to maintain her employment with Rehab Co.which failed to verify the documentation.

Therapy-Medical Necessity

- Jan. 2011, Nursing Home agreed to pay the United States $953,375 to settle claims that it defrauded Medicare Part A. NH's rehab contractor placed intense pressure on workers to maximize billings. They forwarded billings for unnecessary services to NH for submission to Medicare. E.g., occupational therapy to Alzheimer's patients who could never return to the workforce was regularly provided.

Therapy-False Claims

- **Mar. 8, 2013; U.S. Attorney; Eastern District of TN**
- **Nursing Home Companies agree to Pay US and St. of TN $2.7 million** + interest, to resolve claims that they violated the False Claims Act by knowingly submitting or causing the submission to Medicare and Medicaid of false claims for medically unreasonable and unnecessary rehabilitation therapy.

Rehab Co

Therapy company accused by the US DOJ for allegedly paying illegal kickbacks of $10 Million:

- **One time fee of $600,000 to a SNF chain to get the rehab contract in Missouri NH's.**
- **Billed SNF 70% of the Medicare rate and split the remaining 30% with the SNF**

Nursing Home Chain

- Charged with violating the False Claims Act by encouraging therapists to bill higher amounts and do more expensive therapy—even if patients didnt need therapy or could be harmed by it.
- Chain billed nearly 68% of its Medicare rehab days at RUH. The national level is 35%.

Rehab Co

- Rehab Co billed $4.1 Million over 3 years and OIG claims at least $3.1 million was improper for Medicare reimbursement.
- OIG recommended that Rehab Co (1) refund $3.1 million to the Federal Government; (2) strengthen its policies and procedures to ensure that outpatient therapy services are provided and documented in accordance with Medicare requirements.

Other Nursing Home Cases

Quality of Care, Kickbacks

Elizabeth Parker

Quality of Care in KY Nursing Home

- Under a settlement agreement with the U.S. Government, Health Care Center and its manager are enhancing the care that they provide to residents of nursing home in Erlanger, Ky. The agreement:
- Resolves False Claims Act claims ($350,000)
- Implements quality enhancements
- Requires retention of independent compliance consultant approved by US Attorney

Kickback Case

- Bronx, NY, nursing home owner was arrested in 2009 on charges of bribing a hospital social worker to steer patients to her nursing home, and of improperly collecting payments from the state's Medicaid program. She died in custody in 2011.
- NY attorney general reached a settlement with her estate for $2.5 million to be paid to NY's Medicaid program, which includes $1.2 million in reimbursements, and $1.3 million for damages.

Kickback Penalties

- Criminal penalties: $25,000; 5 years in prison

- Civil penalties: $50,000 penalty, civil assessment of up to 3 times the kickback, exclusion from federal health care programs, all False Claims Act penalties

Watch out for HIPAA

- Privacy Rule
- Security Rule
- Breach Notification Rule
- Omnibus effective date: September 23, 2013

Penalties: HIPAA

- Civil penalties: up to $50,000 per violation ($1.5 Million annual maximum per type of violation)
- Criminal penalties: up to $250,000 and 10 years imprisonment

Other Trends

- A hospice provides free goods or goods below fair market value to a SNF to induce the SNF to refer patients to the hospice
- A DME company provides free devices to doctors who prescribe and order DME from the DME company
- An imaging center and medical center agree that the medical center will send its patients to the imaging center—and they will split the profits.
- A home health company pays a rehab company cash for every patient rehab refers to the home health co.

Local Cases

July 18, 2013; - Physician and Nurse Practitioner were indicted on multiple health care fraud related charges for their alleged false billing for services never rendered and false statements in patients' medical records.

Local Cases

- July 11, Louis, MO – Physician was sentenced to one year and a day and ordered to pay restitution of $119,000 and a fine of $30,000 for billing Medicare and Medicaid for services he had not performed. His company was ordered to pay $119,000 in restitution.

Local Cases

July 11, 2013; U.S. Attorney for the Southern District of Illinois, and Gerald Roy, Special Agent in Charge, United States Department of Health and Human Services, Office of Inspector General, Office of Investigations for **Region 7 (Kansas City office),** announced today a second wave of indictments arising out of the abuse of a Medicaid program in Illinois.

So. IL, continued

The program pays personal assistants to assist Medicaid recipients with general household activities and personal care. The program is intended for recipients under 60 years of age and is ostensibly designed to reduce Medicaid expenditures by avoiding more expensive institutional care, including nursing home care.

Whistle Blower Kickbacks Case

- (7/25/13) An Illinois Federal judge ruled that two nursing home operators must stand trial to face a whistle-blower's allegations that the father and son took kickbacks related to the 2004 sale of a pharmacy company. The company agreed to pay $17.2 million to the government to settle its part of the ongoing lawsuit.

Enforcement Trends

- The August 1, 2013 list of ONLY FEDERAL ENFORCEMENTS for 2013 is 70 pages long.
- Word Searches:

Nursing Home	24	DME	15
Therapy	18	Home Health	63
Billing	49	Arrest	24
Doctor	62	Sentenced	189

Plus, states conduct their own investigations.

Enforcement Is Up

OIG enforcement activity	2011 Result	2012 Result
Recoveries from audits and investigations	$5.2 Billion	$6.9 Billion
Individuals/entities excluded from Federal health care programs	2662	3131
Criminal actions brought against individuals/ entities	723	778
Civil actions brought (false claims lawsuits, civil monetary penalty settlements, provider self-disclosures)	382	367

STRATEGIES FOR RESPONDING TO NEW COMPLIANCE RISKS

Build an Effective Compliance Program

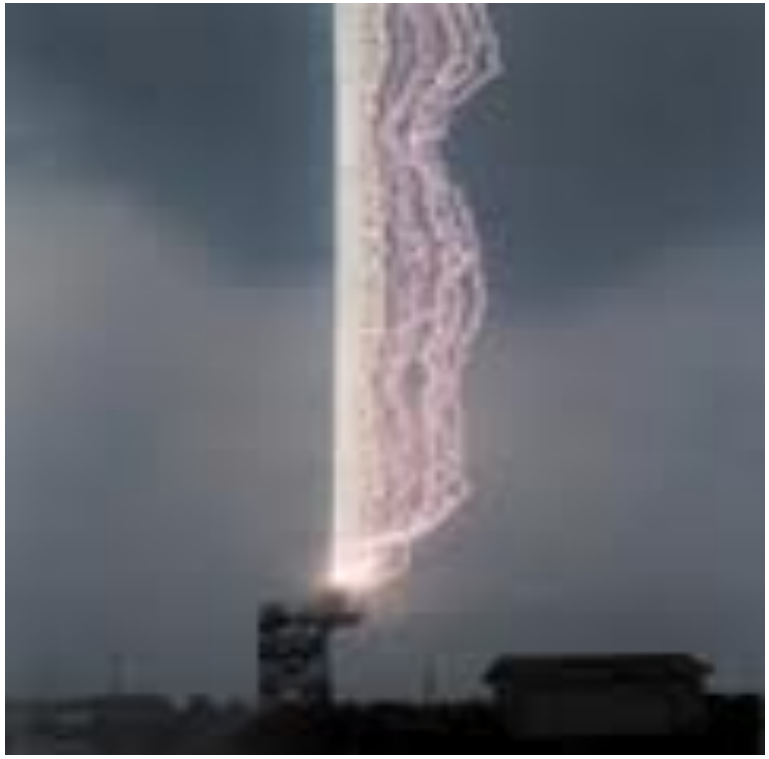
Benefits of Compliance Program

- Minimize financial loss with reduced sanctions and penalties
- Improve quality of care and enhance your reputation
- Lower exposure to liability
- Reduce whistleblowing
- Minimize repayments

Why Do We Need Compliance?

- Comply with health care laws and program requirements
- Ensure accurate billing
- Minimize risk of government penalties
- Identify and correct compliance problems as soon as possible

Don’t Be A Lightening Rod



Mitigate Damages

- The Federal Sentencing Guidelines provide that a facility must have established compliance standards and procedures for employees and other agents to follow in order to receive sentencing credit for an ‘‘effective’’ compliance program. Also, damages may be reduced from treble to double.

- In a 2012 case against Morgan Stanley, the U.S. DOJ mitigated damages publicly for the first time. A China-based managing director was criminally prosecuted on a multi-million dollar bribe to a government official. The DOJ declined to charge Morgan Stanley citing its system of internal controls, which provided assurances that its employees were not bribing government officials. The company voluntarily disclosed this matter and has cooperated throughout the department's investigation.

Is Your Plan Effective?

- Criminal sanctions may be mitigated by a compliance program, but only if that program is **effective**.

- Many SNFs lack the policies & procedures, staff training, audit functions, and regulatory updates to keep their compliance programs effective.

OIG on Mitigation April 2013

- In 234/235 self-disclosure cases since 2008, OIG released disclosing parties from exclusion without any integrity measures.
- OIG has a presumption against requiring integrity agreements in such cases BECAUSE SELF-DISCLOSURE IS EVIDENCE OF A STRONG, EFFECTIVE COMPLIANCE PROGRAM.
- (CONT.)

Mitigation, (Cont.)

- Such providers "deserve to pay a lower multiplier on single damages." The multiplier varies with circumstances.
- Providers with strong, active compliance programs may receive mitigation of damages related to their failure to report and return overpayments within 60 days of identification of overpayment. (Civ. Mon. Penalties and False Claims Acts.)
- May toll the statues of limitations.

Keeping Your Compliance Program Current

Elizabeth Parker, JD, RRT

Periodic Audits

…keep your compliance program effective

Annual Review

- Annual Review of the overall effectiveness of the compliance program

Auditing Therapy

- Therapy (part A & B) is a constant focal point for investigators.
- Medicare expenditures in SNFs have more than doubled in the last decade (OIG work plan, 2013)
- An OIG investigation will certainly include a review of your therapy documentation

Program Integration

- Use QA to monitor your compliance program efforts
  - P&P reviews
  - Complaint log/action
  - Staff training
  - Billing audit results

Auditing and Monitoring

- Quality assurance program
  - Five elements
  - Proactive, reactive, effective
  - Therapy audits
- Auditing
  - Employee screening and therapy are only two of the many audits that should be performed.

OIG finds 25% of SNF claims faulty

- How can we prepare for increased review of SNF claims?

Stay Current

- Stay current
  - Monitor and incorporate updates into your Compliance Program
    - New regulations
    - OIG updates
    - Recent enforcement actions

Stay Informed

- http://oig.hhs.gov
- LeadingAge Hotline
- CMS Survey & Certification
- http://www.hhs.gov/news/email/index.html
- MPA Compliance Updates

Bio:

Elizabeth Parker, JD, Associate Compliance Manager, MPA; B.A., Western Michigan University; JD, Arizona State University Sandra Day O'Connor College of Law. Ms. Parker helps providers design, implement and manage effective compliance programs.

Bio

Scott Gima, MHA, LNHA, BSN, is Vice President of MPA. In addition to being a turnaround specialist and construction project manager, Mr. Gima is a Healthcare Manager and Advisor who has developed corporate compliance programs for long-term care facilities.

Margaret Scavotto, JD, General Counsel & Compliance Manager

Elizabeth Parker, JD, RRT, Associate Compliance Manager

Scott Gima, MHA, LNHA, BSN, MPA Vice President

www.healthcareperformance.com

MPA works with healthcare providers who want to ensure they meet the strict and ever-changing Federal criteria for compliance programs. We are uniquely qualified to manage every stage of compliance program development, implementation, and ongoing management.

This presentation is copyrighted, © 2013 Management Performance Associates

Management Performance Associates is not a law firm and does not provide legal advice. If you have any questions about how compliance applies to your organization, please contact your attorney.