Section 6102 of the Resident Protection Affordable Care Act of 2010 required skilled nursing facilities (SNF) to establish a compliance and ethics program by March 23, 2013. Most of us have an existing program that may or may not be up to date, so now is the time to ensure that your program is in place, establish a compliance officer and compliance team, and think about outstanding issues that need to be addressed.

According to the Federal Register, Section 6102 includes the following requirements:

- The organization must have established compliance standards and procedures to be followed by its employees and other agents that are reasonably capable of reducing the prospect of criminal, civil, and administrative violations
- Specific individuals within high-level personnel of the organization must have been assigned overall responsibility to oversee compliance with such standards and procedures and have sufficient resources and authority to ensure such compliance
- The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through the exercise of due diligence, had a propensity to engage in criminal, civil, and administrative violations
- The organization must have taken steps to communicate effectively its standards and procedures to all employees and other agents, such as by requiring participation in training programs or by disseminating publications that explain in a practical manner what is required
- The organization must have taken reasonable steps to achieve compliance with its standards, such as by utilizing monitoring and auditing systems reasonably designed to detect criminal, civil, and administrative violations by its employees and other agents and by having in place and publicizing a reporting system whereby employees and other agents could report violations by others within the organization without fear of retribution
- The standards must have been consistently enforced through appropriate disciplinary mechanisms, including, as appropriate, discipline of individuals responsible for the failure to detect an offense
- After an offense has been detected, the organization must have taken all reasonable steps to respond appropriately to the offense and to prevent further similar offenses, including any necessary modification to its program to prevent and detect criminal, civil, and administrative violations
- The organization must periodically undertake reassessment of its
compliance program to identify changes necessary to reflect changes within the organization and its facilities

In March 2000, the Office of Inspector General (OIG) released a voluntary Compliance Program Guidance (CPG) for Nursing Facilities followed by a supplemental CPG in 2008. The two documents collectively offer a set of guidelines that nursing facilities should consider when developing and implementing a new compliance program or evaluating an existing one.

Many nursing home providers have a compliance program. Compliance programs will always need remodeling and updating to ensure they meet current guidelines and cover all bases. Remember, CMS will be enhancing compliance guidance later this year.

The OIG informed us against developing cookie-cutter compliance programs. Rather, it recommends each program be customized to address the unique aspects of your facility, such as facility size, resources, culture, and corporate structure. Traditionally, billing and coding have been the focus areas, but the OIG has expanded the overall focus to include quality of care areas as well. Facilities should ensure that risk factors related to discharge planning, inappropriate rehospitalizations, accurate resident assessment, comprehensive care planning, resident safety, and use of psychotropic medications are addressed.

It’s not surprising that many facilities feel overwhelmed by the task!

**It’s not just paper compliance**

The key part to building this compliance and ethics program is ensuring it’s an effective program with functional team members who meet routinely throughout the year.

Providers cannot view this as simply a paper compliance program because it’s much more than that. The plan facilities put down on paper must then be transformed into an up-and-running program within the organization—with its compliance officer leading the committee.

When establishing or reviewing a compliance and ethics program, consider the following:

- **Have a written plan, but take action.** Facilities should have a written plan in place that details the responsibilities of the committee and the individuals on the team. However, it’s also imperative that the committee remains active by meeting routinely and investigating issues with billing and regulatory compliance. If you have to go through the process of creating a program, you should also extend the effort to make it effective.

- **A complex program isn’t always effective.** A comprehensive program is not dictated by the size of your policy or your binder. The best programs are those that are very simple, easy to understand, and focused. Sometimes facilities overthink their plans and end up with 20 pages of processes and mechanisms that no one
can understand or remember. Simple is always better in this situation, primarily because it’s easier to train staff members to recognize the issues of noncompliance or billing errors, and then know who to report those to.

■ **One size doesn’t fit all.** It’s not enough to simply copy a sample policy out of a book. SNFs need to sit down and think about what their code of ethics is going to be as well as how they will handle complaints and what their self-evaluation process will be to create an individualized approach.

■ **Don’t be afraid to uncover problem areas.** CMS auditors will be looking more at the process than the policy itself, including how often the committee is meeting and what kind of issues are addressed. Keeping the process simple will keep it effective. In fact, auditors won’t punish facilities for uncovering problems, as long as those issues are addressed in a consistent and effective manner. Rather, a lack of problems could raise suspicion, indicating that your process may be inefficient.

**Who should be on the committee?**

From a regulatory compliance perspective, the members of the compliance and ethics committee are just as important as the issues that are discussed.

It is important for facilities to choose committee members from a variety of positions in the nursing facility, not just from the management side. When building an effective compliance committee, consider the following:

■ The compliance and ethics committee needs to be a unique team of individuals who are the best selections for the individual’s specific position within the facility. Choose your team members wisely and train them in regulatory compliance, keeping them productive and well informed along the way.

■ The facility’s corporate attorney or legal counsel should be included to provide legal advice regarding issues such as vendor relationships.

■ Frontline staff should also be included and some form of compliance education should be provided to nurses and doctors so they can recognize potential issues before they spiral out of control. Auditors will question staff members to ensure they know who to contact if they have a concern about something like billing fraud.

■ Finally, CMS recognizes that every SNF has unique factors such as size and location. A nursing facility that is part of a national chain may have a committee that is more independent and composed of individuals at various levels in the company. A smaller, independent nursing home in a rural community will have a smaller committee made up of facility administrators. As long as your facility can show it is putting forth real effort to create a successful, active committee, the facility is on the right track.

**The benefits of a compliance program**

Beyond meeting federal regulations, a compliance and ethics program can
uncover issues that, if gone unnoticed, will compound into serious violations.

For example, providers that have determined they received an overpayment from CMS have 60 days to return the overpayment and report it to the government without being penalized.

While this specific example is not required to be noted within a facility’s compliance plan, it is a prime example of the factors that these committees need to consider. If a facility retains a payment that it has determined as an overpayment past those 60 days, the statute says that this can be treated as a false claim, and that’s not a situation any facility wants to find itself in.

The compliance and ethics committee can ultimately serve as conduit for known and potential risks, channeling them through a rigorous process to prevent risks from becoming blatant problems. Early detection of issues related to billing, quality of care, vendor contracts, and contracts with other providers prevents problems further down the line.

For that reason, it is highly recommended that if SNFs haven’t fully established their committee and program already, they do so now.

**Need additional guidance?**

Join us in Chicago for the only seminar that covers long-term care quality improvement while focusing on reducing financial risk. At this exciting seminar, HCPro’s regulatory expert Diane Brown, BA, CPRA, will dive right into the Quality Assurance and Performance Improvement (QAPI) initiative by providing hands-on guidance to launching a facility-specific QAPI program with a particular look at common clinical or survey concerns, plus the frequent billing, financial, and Medicare issues all SNFs face.

After attending this seminar participants will be able to:

- Identify the steps necessary to develop a QAPI program and how to incorporate it into the daily regimen
- Analyze current Medicare risk factors such as those within the PEPPER reports and the OIG Work Plan
- Conduct internal audits of current documentation, assessment, therapy utilization, and coding practices
- Make meaningful steps to reduce rehospitalizations and atypical drug use
- Recognize the signs of an adverse event and the steps to take to stop future adverse events
- Use QAPI techniques to improve the RAI and discharge processes

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