

**HCCA Enforcement Compliance Institute
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**The Government Enforcement Official and Chief Compliance
Officer – Learned Experiences on Pro-Active Initiatives to
Mitigate and Minimize Risk**

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Bret S. Bissey, MBA, FACHE, CHC, CMPE

Vice President, Chief Compliance Officer at Gateway Health

- 30 years of diversified healthcare management, operations and compliance experience
- Former SVP, chief of ethics and compliance officer at UMDNJ
 - Credited with re-engineering the compliance program of the nation's largest free-standing public health sciences university
 - Successfully led the compliance program to adhere to CIA with DHHS/OIG that occurred following a Deferred Prosecution Agreement
- Chief compliance and privacy officer at Deborah Heart and Lung Center
 - Three-year CIA, first settlement of Voluntary Disclosure Protocol
 - Compliance program recognized by HCCA as a "Best Practice"
- Author of Compliance Officer's Handbook



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Agenda

- Background Information – Risk Today
- Primary Enforcement Tool – The FCA
 - *Four General Types of FCA Cases*
- Medicare Advantage
- Government Enforcement Official Case Examples & Best Practices
 - *Medical Necessity and Stark-AKS Cases*
- Chief Compliance Officer Best Practices
- Closing Thoughts
- Q&A

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Regulatory Sanctions

- Many times Regulatory Sanctions, such as:
 - *Fines, Penalties, Corporate Integrity Agreements, etc... have nothing to do with "Intentional" actions*
- Rather they are due to Best Practice business processes not being established to mitigate risk and to enhance efficiencies
- You didn't know about the risk or didn't have the resources to adequately address the risk and are not advised actions to take in this high risk area

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Medicare Advantage Plans – Why important to Audit and Compliance Space?

- Senator Chuck Grassley (April 17, 2017) letter to CMS Administrator calls for tighter scrutiny of MA Plans – some studies suggest that \$125 Million in overcharges in at 5 MA Plans in one year...
- When Sen. Grassley speaks watch for enforcement to follow...
- MA Plans is a popular alternative to traditional Medicare
- Privately run health plans have enrolled approximately 18 million (33% of Medicare population)...

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Recent Case (October, 2018)

HealthCare Partners Holdings, LLC (DaVita, Inc.)
\$270 Million Settlement

- Improper Medical Coding
- Settlement Agreement states "... submitted unsupported diagnostic codes .. To receive higher payments..."
- Sent providers (via a separate firm) to visit patients in home which generated "unsupported or undocumented" diagnosis codes
- Davita self disclosed... they had acquired HealthCare Partners in 2012
- Approach might be called "one-way" chart reviews
- Whistleblower reported to receive \$10 Million

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Chief Compliance Officer: Learned Best Practices

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How Best to Mitigate and Minimize Risk via the Compliance Program

- Main tenets:
 - Compliance needs to be pro-active and not reactive
 - Instill in your organizational culture that compliance is an investment and not an expense
 - Don't lose sight of your "blocking and tackling"

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Compliance is Pretty Basic

- Seven elements of the OIG Model Compliance Program:

1  COMPLIANCE OFFICER & PROGRAM OVERSIGHT	2  POLICIES & PROCEDURES	3  EDUCATION	4  AUDIT	5  CORRECTIVE ACTIONS TO IDENTIFIED PROBLEMS	6  OPEN COMMUNICATION	7  ENFORCE VIOLATIONS
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What Does a CCO Need?

- Independence
- Access to the board
- Authority and respect
- An appropriate budget
 - FTEs, consultants, technology, audits
- Knowledge
- Information
 - Measurement
- Contracting (Focus Arrangements)
- HIPAA / IT Security Support

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What Does a CCO Need?(Continued)

- Tone at the top
 - Proactive or reactive?
 - Expense or an investment?
- Ability to constantly educate
- Tap into a network of outside resources
- Someone to talk to when times get tough
- Validation of your efforts
- Intangibles
- Thick skin

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Why Would You Take Sights Off of the Seven Elements?

- CCO experience of when things have the potential to "Go South" on your compliance program:
 - Pressure exerted upon doing compliance the right way
 - Haven't sold and resold the program
 - Haven't developed appropriate relationship with General Counsel
 - Haven't developed appropriate compliance oversight with CEO, COO, CFO, Chair of Board, Chair of Audit Committee
 - Don't have the necessary resources/budget
 - Don't have authority to have healthy conflict based discussions
 - Surrounded by leaders that display "situational compliance"

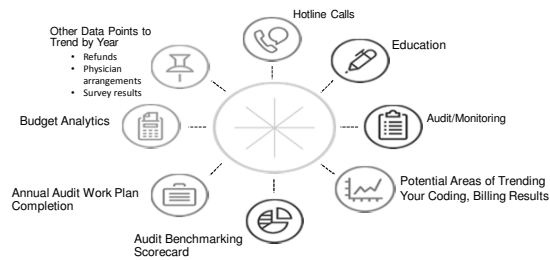
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What is Pro-Active Compliance?

1. Auditing
2. Education
3. Investment
4. Repayments
5. Preparation for Action
6. Listening Skills
7. Leadership

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Elements to Consider in Your Best Practice Efforts



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Independence

- Can you make the proper decision without fear of some sort of retaliation?
- Examples:
 - The lead admitter of patients to your hospital is in violation of the medical records completion policy – can you revoke privileges as policy states?
 - The president's wife is asking to review sensitive and confidential information related to an upcoming community fundraiser. Can you treat her as if she were a normal citizen?
- Who validates this independence?

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Compliance and Operations

- Compliance needs to be independent from operations
- Many CIAs state “any noncompliance job responsibilities of the Compliance Officer shall be limited and must not interfere with the Compliance Officer’s ability to perform the duties outlined in this CIA”
- This is a “big” deal that won’t work in many organizations...

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Access to the Board

- Can you communicate with the board whenever you want without second guessing yourself?
- Are you “steered away” from speaking with the board?
- Do you report to the board?
- Are board members involved in the compliance program oversight?
- What is the compliance knowledge level of the board?
 - Engage experts to assist in program functioning and validation of “effectiveness” of compliance program
 - Can you get assistance (externally) when you deem necessary?
- Information flow from entity.
 - Is the board receiving all necessary information?

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Authority and Respect

- Do people know the compliance officer?
- Is the person taken seriously?
- Do players try to intimidate the compliance officer?
 - What happens in these circumstances?
- What is the relationship with the CFO, COO, CMO?
 - Who calls meetings, set agendas, etc.?
- What is the attendance at your compliance committee meetings?
 - Do you track attendance? What happens if someone doesn’t attend? Are there consequences?
- How do you influence this?

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An Appropriate Budget

- Who defines what is appropriate?
- Have any validation efforts been performed to review the potential ROI of your compliance program?
- Specific activities:
 - Sanction screening
 - Contract management and reporting
 - Dealing with Focused Arrangements
 - Audits (routine and for-cause)

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An Appropriate Budget (Continued)

- External effectiveness reviews
- Education resources
 - Internal
 - Computerized training
 - Focused in-person training
- Conflict of Interest disclosure and management
- Hotline services
- Investigation resources

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An Appropriate Budget (Continued)

- Staff
- Relationship with Internal Audit
- Do you have enough people to do the job?
- How do you justify your budget?
- Expense or investment?
- Proactive or reactive?

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Budget Analytics

- Based upon operating and FTE budgets approved by Board or Compliance/Audit Committee
- Operating budget variance (\$\$ and %)
 - Why a variance? Consultants?
- FTE budget variance (\$\$ and %)
 - Is there turnover? Why?
 - Are there unfilled vacancies? Why?
 - What corrective action is proposed?
- Trending of budget and actual expenses over past several years
- Good management dictates that you operate department within acceptable budget...
 - Being under budget doesn't mean you are doing a good compliance job!

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Other Data Points to Trend by Year

- Compliance presentations to senior management
- New and renewed Focus Arrangements
- Payments made to non-employed physicians without an agreement
- Payments made to non-employed physicians without evidence of time and effort approval
- Refunds
- Survey results

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Tone at the Top

- Free and open dialogue with the board
- Inclusion and involvement is key
- Is compliance a standing agenda item in board and/or audit committee meetings?
- Authority and control without intimidation
- The separation of compliance and legal
- How interested is the top of the organization in compliance?
- Are they reactive or proactive?

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Education

- Ability to be creative in education venues
- Do you give quizzes to assess retention of information?
- You need to do some personalized education
- You need to be selling the program constantly
- There is value in having an outside speaker
 - Especially important for C-suite and board (in many situations)

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To Whom Do You Talk When You Are Having a Tough Day, Week, Year?

- Networking with fellow compliance officers
- Budget for an external coach, validator
- You need to understand that your actions and decisions many times are not going to win you friends
- How do you keep your sanity?

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Validation of the Compliance Program

- Ask your board to support a periodic assessment of the compliance program
 - Focus on any gaps to Best Practice
- Your colleagues will like to hear you are getting audited!
- Have findings presented to board, audit committee and compliance committee

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Knowledge

- The compliance officer should be a subject matter expert
 - Certification to validate
- However, no one in this business knows everything
- It is OK to say “I need help” – are you able to get help when you need it?
 - Example: Coding and reimbursement issues...

Information

- Access to data?
- Delinquent Contract Management Reports
 - How frequent? Is the information shared?
- Conflict of Interest disclosures
 - Management reports, tracking, etc...
- Are overpayments being repaid?
 - Management reports, tracing, etc...
- Where is the risk in the organization?
- You need current information to answer

Listening and Leadership Skills

- *“An effective compliance officer must listen to the objections that are being dealt his or her way which could impede the development of good compliance...” - Bret S. Bissey*
- Do you understand as a Compliance Officer all the responsibilities and pressures attached to:
 - CEO
 - Board
 - Medical Staff Leadership
 - CCO
 - CFO, etc...
- An excellent CCO needs to understand where the pushback is coming from and deal with it “head on” instead of “maybe it will go away.”

If an organization is found guilty of a violation of state or federal laws, the government may offer a reduction in penalties if an effective compliance program is in place

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Questions??

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