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COMPLIANCE PROGRAMS FOR HOSPICES

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INTRODUCTION

Compliance planning has been and will continue to be an essential element of the successful operation of a hospice. As a result, all hospices face the following question: What efforts and resources should the hospice devote to compliance planning?

In light of the investigations of hospices under Operation Restore Trust and the coordination of state surveyors with federal fraud investigators, many hospices have already decided to expend the resources necessary to create formal compliance programs. These formal compliance programs are designed to educate personnel so as to prevent violations of the law, to uncover wrongdoing by employees and to create protocols for disclosing wrongdoing to government regulators.

Recent developments at the Office of Inspector General ("OIG") strengthen the argument that *every* hospice should develop some type of formal compliance program. This article identifies these recent developments and then outlines the seven elements necessary to have an "effective" compliance program. Finally, the article describes the initial steps a hospice can take to get its compliance program off the ground.

RECENT DEVELOPMENTS AT THE OIG

In January of 1999, the OIG requested recommendations regarding the development of compliance program guidance specifically for the hospice industry. In addition, the OIG is currently in the process of developing compliance program guidance for other types of entities

including DME suppliers, managed care organizations and nursing homes. (The OIG has already issued compliance guidance for laboratories, hospitals, home health agencies and third party billing agents). Although the OIG makes clear that following its compliance guidance will not be mandatory, the increased efforts to develop compliance guidance indicate that enforcement authorities will increasingly expect that hospices have formal compliance programs in place.

Also in January of 1999, the OIG released a Special Fraud Alert addressing physician liability for certifications in the provision of medical equipment and supplies and home health services. The Special Fraud Alert indicates that the OIG is concerned about the potential for physician certifications to be a source of violations of either the False Claims Act or the antikickback statute. While the Fraud Alert applies to DME and home health, the parallels with hospice are clear. Physicians' liability for inappropriate certifications to home health and hospices can be expected to have a "chilling effect" on referrals. Accordingly, hospices should examine their operations to assess whether physician certifications of terminal illness are being adequately documented in terms of the six-month prognosis. In addition, a hospice needs to be able to educate physicians who, because of the Special Fraud Alert, may be reluctant to sign legitimate certifications. A hospice organization can address both of these issues through a formal compliance program.

DEVELOPING A COMPLIANCE PROGRAM

In its request for recommendations, the OIG indicated that it will again use the seven elements it identified in the existing compliance guidance for clinical laboratories, hospitals, home health agencies and third party billing companies. According to the OIG, an "effective" compliance program must contain all seven elements. To satisfy the seven elements, a hospice will need to:

1. Develop and distribute written standards of conduct, as well as written policies and procedures, that promote the organization's commitment to compliance and that address specific areas of potential fraud.
2. Designate a chief compliance officer and other appropriate bodies (e.g., a corporate compliance committee) charged with the

responsibility of operating and monitoring the compliance program and who report directly to the hospice administrator and the Board.

3. Develop and implement regular and effective education and training programs for all affected employees.

4. Create and maintain a process to receive complaints and adopt procedures to protect the anonymity of complainants (including potential “whistleblowers”) and to protect them from retaliation.

5. Develop a system to respond to allegations of improper activities and take appropriate disciplinary action against employees who have violated internal compliance policies, applicable statutes and regulations, or federal, state and private payor health care program requirements.

6. Use audits or other risk evaluation techniques to monitor compliance and assist in addressing identified problem areas.

7. Investigate and correct identified systemic problems and develop policies addressing the nonemployment of sanctioned individuals.

GETTING STARTED

A hospice should not wait for the release of the compliance guidance before making efforts to develop a compliance program. The process of developing the compliance guidance could take a year or longer and during this time a hospice will remain exposed to risks that could effectively be addressed by a compliance program. Most hospices have already completed many elements of their compliance plan and what remains is to organize, fill in the gaps and implement it. Whether a hospice is very large or very small makes no difference. In fact small hospices are often at significant risk. Compliance plans should be tailored to address the circumstances of the specific hospice. Ample information exists that can serve as a basis for developing a compliance program. This information includes the compliance guidance for other providers and fraud alerts that specifically address practices in the hospice industry.

By taking the two steps described below, a hospice can ensure that

its compliance program will be off to a good start. First, compliance efforts must have support at the outset from the governing body of the hospice. It will be necessary, therefore, to educate the board of directors on the importance of compliance and create a sense of urgency within the board. Once the board is fully committed to developing a compliance program, it should adopt a board resolution signaling its commitment. The same resolution can be used to appoint a compliance officer and a compliance committee who will then move forward to develop and implement a compliance program with the elements listed above.

Second, hospices are advised to involve legal counsel familiar with fraud and abuse law. Your legal counsel will help to identify risk areas and develop appropriate responses to identified problems.

CONCLUSION

Given the recent developments at the OIG, any hospice that has not yet adopted a formal compliance program should reconsider whether it is now appropriate to do so. In addition, those hospices that either have developed or are in the process of developing a formal compliance program need to continually monitor the developments at the OIG to determine whether additional efforts or modifications of their compliance programs may be appropriate.

Reinhart Boerner Van Deuren's Hospice and Palliative Care Practice Group serves hospices across the country in a variety of areas, including: regulatory compliance; survey and certification; accreditation; licensing; HIPAA; caregiver misconduct investigations; due diligence, mergers and acquisitions and other corporate matters; labor and employment; criminal and civil investigations by state or federal government agencies; litigation; contracts and daily operational issues.



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Hospices are encouraged to contact their legal counsel.