

# Compliance and Ethics Program Requirement Mandatory for Long Term Care

As of March 2013, the Affordable Care Act (ACA), as a condition for participation in federal health care payment programs, requires that nursing facilities (NF) and skilled nursing facilities (SNF) have "in operation" compliance and ethics programs that are effective in preventing and detecting criminal, civil and administrative violations. As part of the requirement, the Department of Health and Human Services (HHS) is required to promulgate regulations for the NF/SNF programs—however, HHS has not yet released enforcement rules under the section.

HHS's lack of guidance, however, does not mitigate the requirement, and NFs/SNFs should by now have adopted, implemented and even reassessed effective compliance programs. The ACA identified eight required elements for compliance and ethics programs. They include the NFs/SNFs:

- Establishing compliance standards and procedures to reduce criminal, civil and administrative violations;
- Assigning overall compliance oversight and authority to high-level personnel to assure such compliance;
- Using due care not to delegate substantial discretionary authority to individuals who have the propensity to engage in criminal, civil or administrative violations;
- Taking steps to communicate standards and procedures to all employees and agents through training programs or publications;
- Achieving compliance with the facilities' standards through monitoring and auditing systems designed to detect criminal, civil and administrative violations, and having a reporting system whereby employees can report violations;
- Consistently enforcing the standards through disciplinary mechanisms, including discipline of individuals responsible for failure to detect offenses;
- Taking reasonable steps to respond to offenses and to prevent further similar offenses; and
- Periodically undertaking the reassessment of its compliance program to identify

## **POSTED:**

Apr 9, 2014

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changes necessary to reflect changes within the organization and its facilities.

In addition to the NF/SNF program requirement, the ACA also contains provisions relating to the compliance programs for other types of providers in the long-term care sector. Specifically, the ACA requires health care providers and suppliers, as a condition for participating in federal health care programs, to establish compliance and ethics programs that contain certain "core elements." HHS, however, has not yet defined these "core elements." Guidance is expected to be released on a rolling basis for each industry sector.

Although many of the long-term care providers affected by these changes may not have felt the need to develop effective compliance programs in the past, the ACA's requirements mean facilities need to quickly formalize compliance programs if they have not already done so. Providers or suppliers waiting for HHS to issue more detailed compliance standards for the NF/SNF programs, or the "core elements" for other sectors, should turn to earlier guidance from the HHS Office of Inspector General (OIG) for more insight. The OIG's Compliance Program Guidance, based on the federal Sentencing Guidelines, is substantively similar to the ACA standards and provides extensive details on what an effective compliance program should contain.

Now, more than a year after the initial deadline, all NFs and SNFs should have a compliance and ethics program in place and should be preparing to reassess the program's effectiveness in the very near future—as the final required element made clear, compliance programs must encompass periodic reassessment. Other providers or suppliers in the long-term care sector, although not yet required, should also be formalizing comparable compliance programs so as not to be caught off guard when the regulations finally arrive.

If you have questions regarding the establishment or implementation of your compliance plan and ethics program or would like assistance in conducting the required reassessment of your program's effectiveness, please contact Rob Heath at the address below, any other member of Reinhart's [Health Care team](#) or your Reinhart attorney.

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