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Compliance: More Than Just Following The Rules

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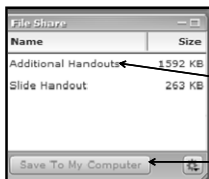


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**Compliance:
More Than Just Following
The Rules**

Rex A. Crosby, OTR
Director of CQI
Encore Rehabilitation Services

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Objectives

- Explain what compliance means
- Describe the guidelines of an effective compliance program
- Identify situations that should be reported and areas of concern in health care

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What is Compliance?

- Compliance means “to follow ethical and honest business practices.”
- Compliance means to provide a high level of quality care.
- Compliance must be understood and practiced by every employee, every day.
- Compliance directs *duty of care*.

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Duty of Care

- Duty of care refers to the obligations of employees to exercise the proper amount of care in their decision-making process.
 1. did you act in “good faith”;
 2. at a level an ordinarily prudent person would exercise in like circumstances, and,
 3. in a manner that is believed to be in the best interest of the customer or organization.

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Compliance Laws

- The federal government wants to prevent fraud, waste and abuse in healthcare.
- The Deficit Reduction Act of 2005 focused on providers that receive more than \$5 million in Medicaid payments each year. It requires that entities have policies in place to prevent fraud.
- Operation Restore Trust was enacted in 1995 and identified \$23.00 in Medicare overpayments for every \$1.00 spent in HH, SNFs and DMEs.

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Compliance Laws (Continued)

- Federal Sentencing Guidelines for Organizations enacted in 1991 gives incentives to corporations to police themselves.
- The Sarbanes-Oxley Act of 2002
- The Patriot Act of 2001
- ISO 9000
- HIPAA
- Federal Information Security Management Act of 2002 (FISMA)

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Enforcement

- The Office of the Inspector General (OIG) protects the integrity of the Department of Health and Human Services (HHS). Reports any problems with fraud to HHS and Congress and makes recommendations to correct the problems. OIG's duties are carried out through audits, investigations and inspections of facilities.

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Enforcement

- The Department of Justice (DOJ) works with the OIG to convict individuals and organizations who are found guilty of fraud, waste and/or abuse of Medicare or Medicaid programs.
- The Federal Bureau of Investigation (FBI) investigates claims of fraud, waste and other criminal behavior related to healthcare practices.

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Effective Compliance Programs

- Data indicates that there is a correlation between ethical business practices and corporate success.



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Effective Compliance Programs

- Defines legal and ethical risks
- Prevents risks from becoming liabilities
- Detects ethical and compliance issues as they arise
- Responds quickly to ethical and compliance issues
- Evaluates risk and continuously improves compliance management

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U.S. Federal Sentencing Guidelines for Organizations (FSGO)

- According to the FSGO, an effective corporate compliance program, including an ethics training program, incorporates seven characteristics:
 1. Standards and Procedures
 2. Accountability at the Top
 3. Care in Delegation
 4. Education and Communication
 5. Business Processes
 6. Personal Accountability
 7. Responds to Problems

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Standards and Procedures

- The organization must have established compliance standards and procedures to be followed by its employees that are reasonably capable of reducing the prospect of criminal conduct.



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Accountability at the Top

- Specific individual(s) within high-level personnel of the organization have been assigned overall responsibility to oversee compliance. Sometimes referred to as Compliance Officer or Compliance Committee.



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Care in Delegation

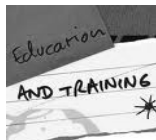
- The organization must have used due care not to delegate substantial discretionary authority to individuals whom the organization knew, or should have known through due diligence, had a propensity to engage in illegal activities.

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Education and Communication

- The organization must have taken steps to communicate effectively it's standards and procedures to all employees by requiring participation in training programs or by issuing publications that explain in a practical manner what is required.



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Business Processes

- The organization must have taken reasonable steps to achieve compliance with its standards by utilizing monitoring and auditing systems reasonably designed to detect criminal conduct by its employees and by having in place a publicizing report system whereby employees could report criminal conduct by others within the organization without fear of retribution.

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Personal Accountability

- 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. Adequate discipline of individuals responsible for an offense is a necessary component of enforcement, however the form of discipline that will be appropriate will be case specific.

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Responds to Problems

- 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 modifications to its program to prevent and detect violations of law.

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Code of Conduct

- › States what the employer expects from the employee
- › Outlines acceptable work practices and ethical standards
- › States the organization’s mission and values related to day-to-day operations
- › Distinctly defines policies and procedures for reporting hazardous, illegal or neglectful situations

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Compliance and Healthcare

- › Compliance training and implementation affects all aspects of healthcare, but the 5 main areas of focus are:
 1. Employee Screening
 2. Quality of Care
 3. Patient Rights
 4. Billing
 5. Kick-backs

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Employee Screening

- › Employee screening is required for all employees working in health care:
 1. Criminal Activity
 2. Dishonesty
 3. Financial Misconduct
- ❖ The OIG keeps a list of all persons excluded from working in health care.

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Quality of Care

- Regular surveys are conducted to ensure that facilities are providing quality of care to their patients/residents.
- Penalties may be handed out for quality of care complaints or citations.
- Areas monitored for quality of care include:
 1. Abuse—physical, sexual, emotional abuse
 2. Neglect—failure to provide proper care
 3. Misappropriation—gifts/gratuities for care

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Patient Rights

- All patients have certain rights in regards to how they are treated and their choices in the medical treatment they receive.
- Patient Rights should be posted within the facility and discussed with the resident/family upon admission for care.
- Employees should review these rights regularly to ensure they are not in violation.

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Billing

- Billing errors can be due to unintentional human error, however poor organization or blatant disregard of rules could bring about charges of fraud.
 - ❑ Duplicate billing
 - ❑ Billing for services not provided
 - ❑ Back-dating documents
 - ❑ Forging signatures
 - ❑ Failure to repay overpayments

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Kickbacks

- › Gifts received for providing a service
- › Entering into “deals” to enhance referrals
- › Self-referrals/conflicts of interest



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Conclusion

- › Compliance is everyone’s responsibility, from following the rules to reporting suspected violations.
- › Penalties for non-compliant practices can be harsh and include:
 1. Disciplinary Action
 2. Termination of Employment
 3. Fines
 4. Loss of Licensure/Certification
 5. Imprisonment

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When In Doubt

ASK YOUR SUPERVISOR!!

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Questions



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