

Corporate Compliance in Long Term Care—  
How Should Small Facilities Respond?  
Teresa Kraemer, RN, JD

Many long term care providers are just now beginning to look at implementing a corporate compliance program. Why has it taken so long? What are the stumbling blocks? How can facilities move forward with developing and implementing a program?

So why has it taken so long? Well, from providers that have attended classes I have taught on this subject, I have heard a few common themes:

n we really don't think we need one after all they are not mandatory

n the government only goes after the "big guys"

n the government only goes after proprietary providers

n we have a strong ethical mission so we don't need compliance program

n we don't have the resources

While all of these may seem to make some sense, the reality is that no provider is immune from a government investigation and if you are doing wrong and the government finds out, will take action regardless of your size, corporate status, mission, or resources. Furthermore, regardless of your organization's corporate status or mission, all types of facilities have been subject to bad acts by employees and then paid the price for it.

### **Reasons to develop a compliance program**

While it is true that there is no requirement to implement a compliance program, there are very good reasons for program that a provider should consider before resting on this stance. First, the Federal Sentencing Guidelines allow for discretionary reductions in sanctions for a provider that has a compliance program in place. Considering the severity of sanctions, both monetary and prison, a sincere compliance program may mean the difference between probation and jail time.

Second, if the government pursues a provider it believes it should prosecute, and the result is a corporate integrity agreement or settlement agreement, a

compliance program may help temper the stringency of the agreement.

Third, a compliance program is similar to an insurance policy in that it will assist the provider to identify problems early thereby lessening the breadth of wrongdoing and in turn the severity of the consequences.

If these reasons for a compliance program are not compelling then the following should be: it will help to protect you r Board of Directors who can easily become the target of the government investigation of the provider, it will i m p rove your business practices fro m contracting to billing to employee behavior, and it will improve resident care .

### **Review government enforcement activities**

As evidence of the government's aggressive stance one need only look at the Office of Inspector General's (OIG) and the States Attorney Generals' actions. A quick visit to the OIG's We b - site—<http://www.hhs.gov/progorg/oig>— shows that the government is very serious about curbing fraud and abuse.

Corporate integrity agreements and settlement agreements have been entered into with large corporations with multiple long term care facilities, free standing facilities, proprietary, and non-proprietary facilities. Many of these are posted on the OIG's Website.

In addition, the OIG's annual *Work* segment of the health care industry during the year.

### **Stumbling blocks**

What are the stumbling blocks? Aside from the above-referenced reasons why some providers have not implemented compliance program, some of the stumbling blocks expressed by providers include: we don't have the staff and/or we don't have the financial resources.

Typically these stumbling blocks stem from an absolute interpretation of the OIG's Compliance Program Guidance for Nursing Facilities, published March 16, 2000. A read through can easily lead one to believe that the breath and depth of a program must be, in the eyes of the OIG, all encompassing at all times. This interpretation can result in an initial conclusion that there is not sufficient staff or resources to do this, or the belief that you do not have the

expertise to do this. The result is either a deliberate decision not to, or, inertia to attack such a daunting project. But, neither need be the case. Free standing or small corporate groups of facilities should revise the OIG Guidance and pay special attention to the direction given to such entities. For example, the OIG Guidance recognizes that some nursing facilities may not be able to adopt and implement certain elements to the same degree as other facilities that have more extensive resources. As such, in several sections the OIG offers suggestions to assist smaller providers in adopting a compliance program. That said, the OIG Guidance also makes it clear that, regardless of size, the provider should strive to implement the principles *Plan*, both current and past, contain a specific section on long term care and the areas it will focus on within this underlying the policies and procedures in the guidance.

### **Seven basic compliance program elements**

When considering a compliance program it is helpful to review the OIG Compliance Guidance. The following is a brief overview of the seven basic elements of a compliance program and some of the specific guidance to smaller facilities with fewer resources.

#### **1. Written policies and procedures**

The OIG Guidance identifies the written policies and procedures that it believes should be a part of an effective compliance program. This includes: 1) the Code of Conduct; and 2) policies and procedures that address the risk areas identified by the OIG, which include: quality of care, resident rights, billing and cost reporting, employee screening, and kickbacks, inducements and self referrals mentioned. Specific guidance for smaller facilities includes;

- n Regardless of the size of the facility, obtain each employees written acknowledgment of his/her's understanding of the facilities Code of Conduct

- n Focus policies and procedures on the risk areas identified or most likely to arise. At a minimum, analyze survey results and verify correction of identified

problems.

- n Create a reference binder that contains the compliance policies and procedures, OIG bulletins, HCFA bulletins, and relevant technical materials including medical records and billing records that support the care provided and the bill

- n Convey, either formally or informally and at least at employee evaluation time, the importance of the compliance program and the value the facility places upon it

#### **2. Compliance officer and compliance committee**

The compliance officer should be a person with the skills and knowledge necessary to perform the responsibilities of the job. Some of the responsibilities may include:

- n implementation of the compliance program

- n reporting on compliance activities

- n making revisions to the program as needed

- n implementing a training program

- n implementing a system to see that your vendors and business associates are aware of the facility's compliance requirements

- n coordinating with the human resources department on employee matters

- n coordinating with the financial department on contracting and other financial compliance matters

- n investigating matters relating to compliance and coordinating with legal counsel as needed

- n maintaining the compliance program

Specific guidance for smaller facilities includes:

- n A small facility may not have the resources to appoint a full-time compliance officer. As such, depending

- n on the size and resources of the facility the compliance officer may also

- n Identifying billing and cost reporting risks and address them

- n Screen all employees

- n Maintain all appropriate records—have other management responsibilities.

- n If a small facility does not have the resources to appoint a compliance committee, then it should at a minimum appoint a task force to address

particular problems that arise.

### **3. Training & education**

Develop a program for training employees on the compliance program. The scope of the training can be based upon the work performed. For example, dietary staff will need basic training while billing staff will need additional specific training. Specific guidance for smaller facilities includes:

n A nursing facility with limited resources might want to consider cost effective ways to deliver training, for example, while you would need a staff person available to answer questions, consider taping training sessions so new employees can watch the videotape and be trained in a timely manner.

### **4. Communication**

The primary areas of this element of a compliance program include establishing the mechanism for individuals to anonymously report compliance concerns. In addition, there needs to be a mechanism for open communication between the compliance officer, managers, staff, and others. Specific guidance for smaller facilities includes:

n It may not be feasible for smaller facilities to always protect the anonymity of an employee who Like the QA activities facilities currently conduct, the compliance program must include auditing and monitoring activities. The compliance committee should define these activities. Some of these activities may include:

n monitoring billings and claims  
n conducting unannounced mock surveys

n conducting legal review of contracts and relationships with outside vendors

n auditing personnel records

n analyzing past surveys

n conducting trend analysis of data collected

Specific guidance for smaller facilities includes:

n The extent and frequency of monitoring activities will vary depending upon the facilities history of compliance or noncompliance, resources, and identified risk factors. Keep in mind however, that if the facility fails to develop an adequate audit

program, the Government will be less likely to afford the facility favorable treatment under the Federal Sentencing Guidelines.

### **6. Enforcement of the compliance program**

The facility must include in its compliance program the standards to which it will hold its employees and the sanctions for failing to meet the standards. This must be published, distributed, and enforced.

### **7. Responding to detected offenses, corrective action**

The compliance program must include the process and policy of the organization for handling detected offenses and taking corrective action.

Where to start? While the above may seem like a daunting project it does not have to be.

First, there are resources available to long term care providers that provide draft policies and procedures, risk assessment tools, and other helpful documents and tools. You do not have to recreate the wheel.

In addition, the development of this type of program lends itself to a step-by-step approach. So a facility does not need to tackle the job in a week or even in a month.

#### **Step by step**

The following is a simple step-by-step approach. For starters, educate your board and obtain their commitment. Study the compliance guidance and research the resources available.

Convene a task force to work on the program development. Conduct a risk assessment so you can figure out where you need to focus your activities. Build your code of conduct, policies, and procedures.

Train the facility staff. Finally, implement the program step-by-step.

Clearly a small facility with limited resources cannot do it all. However, you tailor your program to fit the needs and the resources of your facility taking into consideration its corporate structure, mission, and employee composition, and are sincere in your efforts, you will be in good stead. n