



NEWS & VIEWS

A Complimentary Newsletter from Med-Net Concepts, LLC
and its Network of Independent Affiliated Companies

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Conflict of Interest in Healthcare

By:
Louise Lindsey, Editor

Hardly a week passes without the news media reporting on a conflict of interest occurring within the healthcare sector. Sometimes it involves physicians and nurse practitioners who have been convicted of receiving kickbacks from pharmaceutical companies and medical equipment manufacturers for writing prescriptions for their newest drugs or for their medical equipment. At other times, the media may report on a long-term care facility that is dangerously "dumping" (unsafely discharging) residents whose Medicare benefits have expired in favor of a new resident with more profitable Medicare benefits. Also, some hospitals, doctors, and long-term acute care facilities are reported to have unwritten agreements to preferentially refer patients/residents to and from their facilities.

Drug diversion is occurring in almost every healthcare provider setting, with staff diverting drugs intended for patients/residents for their own purposes (personal use and/or sale). Therapy departments also have been in the limelight recently for stretching the limits and boundaries on services provided to maximize reimbursements, even when the residents are frail and unable to benefit from those enhanced services.

These are a few examples of the many different circumstances throughout the healthcare sector where a conflict of interest can exist. The January 2019 edition of The Burton Report, gives this description of healthcare conflict of interest:

A conflict of interest in healthcare exists when a health care professional "with responsibility to others is influenced, consciously or unconsciously, by financial, personal, or other factors which involve self-interest." In a profit-driven capitalistic system the typical motive for the existence of a conflict of interest is usually related to financial considerations. The Editor's experience in medicine has been that decision making not infrequently does not take into consideration the best interests of the patient as opposed to the best interest of the doctor, the hospital, the third-party payor, or the government.

The Institute of Medicine (IOM) further defines a conflict of interest as "a set of circumstances that creates a risk that professional judgment or actions regarding a primary interest will be unduly influenced by a secondary

interest." An IOM report describes the primary goals of medicine as improving patient health through beneficial care, performing valid research, and providing excellent medical education. Conflict of interest compromises those primary goals through the unjustifiable quest for financial gain and other consequential interest.

An employee and the employer both have a responsibility to avoid any situation that might pose a potential workplace conflict of interest. Here are some examples to consider-

- An employee involved with selecting a new employee fails to disclose that he/she is related to the job candidate.
- Having a supervisor who is a relative/close friend and who influences salary and promotions.
- A manager who gets paid for providing consulting services to a company's supplier/customer.
- A board of directors' member who is paid for advising another competing company.
- A purchasing agent who accepts gifts and trips from a vendor and chooses to purchase that vendor's products.
- An employee (with a non-compete agreement) who starts a company that provides services similar to those of his/her full-time employer.
- An HR director who fails to conduct an unbiased sexual harassment investigation involving a long-time fellow executive.
- An employee who accepts gifts and products from a training and development company and recommends purchasing those products without comparing them to other similar products from other companies.
- A manager who dates an employee who reports to him/her.

Keys to Handling Conflicts of Interest

As with any identified problem, the solution lies not in ignoring or hiding it. Here are some best practice suggestions-

1. Know the requirements regarding the overlap between private interests and public duties

An existence of a conflict of interest does not automatically point to improper or illegal behavior, but it does suggest the need for properly handling and addressing the situation to prevent a possible violation of Federal law.

There are two sets of conflict-of-interest rules: (1) procurement activities, e.g., purchasing and vendor selection; (2) non-procurement activities, e.g., drug diversion, employee/employer relationships.

2. Employee Training regarding potential conflicts of interest in order to avoid or mitigate conflicts as they arise

For the greatest impact, an organization should have a written policy reviewed by legal counsel and provide annual, documented training. The organization should: (1) require staff to submit annual conflict of interest certification reports regarding outside businesses, outside employment, and volunteer positions; (2) Document attendance at conflict of interest training's; and (3) Follow-up with annual refresher sessions.

3. Create Policies and Procedures to document compliance

Conflict of Interest policies and procedures should explain clearly how conflicts will be treated. If a conflict or a potential conflict of interest arises, the individual with the conflict should advise management in writing and seek guidance on how to resolve the conflict. Written notifications and actions should be documented.

4. Implementing Policies and Procedures regarding Conflict of Interest and Code of Conduct

A goal for implementing these policies and procedures should be to increase awareness, encourage disclosure and discussion of potential conflict issues, and to promote a "culture of candor and ethical conduct."

Leadership and Monitoring are important aspects of compliance. Establishing a protocol where staff feel comfortable self-reporting possible conflicts, asking for guidance, and raising suspected conflict of interest issues without fear of retaliation is key. However, compliance should not rely solely on voluntary compliance, but also on procedures for reporting and conducting independent audits to ensure there are no conflicts. An individual or office should be designated to oversee the implementation and compliance with conflict of interest rules.

Monitoring should involve reviewing the names of anyone (vendors, contractors, suppliers) to determine if there are any real or apparent conflicts of interest with staff.

5. Being Aware of the Consequences.

Violating conflict of interest rules can have serious consequences. While conflict of interest by itself may not be a criminal act, it can lead to other acts that are crimes, e.g., making false statements, misrepresentations, or filing false documents in violation of Federal and State laws.

It should be noted that conflicts of interest are situations not allegations, but they must be disclosed and managed properly.

"Med-Net Compliance's NAB Accredited Courses Provide Insight on How to Avoid Fraud Pitfalls"

Jo Ann Halberstadter, Esq

ADMINISTRATORS TAKE NOTE

Med-Net Compliance, LLC now offers two series of fraud modules with NAB/NCERS CEs on our website. Modules 1-8 offers 3 NAB CEs and modules 9-16 offer 3.75 CEs. All modules provide education on fraud, waste and abuse prevention and offer a combined total of 6.75 CEs for successful completion.

To review the NAB Accredited courses visit our website:

<https://www.mednetcompliance.com/med-net-academy/nab-accredited-courses/>

All 16 courses on fraud, waste and abuse were developed by Betty Frandsen, our Vice President of Professional Development and her staff.

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