



## NEWS & VIEWS

A Complimentary Newsletter from Med-Net Concepts, LLC

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### Completing the Compliance Annual Assessment

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The Office of Inspector General (OIG) of the US Department of Health and Human Services (HHS) requires long-term care (LTC) facilities using Medicaid or Medicare funding to have a compliance committee and to conduct periodic (at least annually) reviews. This obligation to report on an annual basis is to ensure that the LTC continues to operate at maximum efficiency and in full compliance with the law.

There are three major aspects of this requirement: fiduciary responsibilities; duty of care to the residents of LTCs; and, of course, avoiding fraud, waste, and abuse. It is important for the company leadership to have a clear grasp of the organizational foundation which makes the entire process possible—and of their duties in this regard.

According to the OIG, company directors are obligated to ensure that oversight of the facility's compliance function encompasses overseeing the day-to-day business operations and the "exercise of reasonable care to assure that corporate executives carry out their management responsibilities and comply with the law."

This means that directors have a duty to ensure that an adequate corporate information and reporting system exists. Also, directors must ensure that this reporting system will guarantee that all information regarding compliance or noncompliance is brought to management's attention in the timeliest manner possible.

In other words, any failure on the part of company directors to "reasonably oversee the implementation of a compliance program" can expose the company to legal jeopardy, and, in certain circumstances, even lead to directors being held personally liable for losses incurred due to the lack of such oversight.

Company directors often delegate responsibilities. There is a measure of legal protection provided by the "good faith" principle—that is, that the director was led to believe in all good faith that a suitable compliance and enforcement program was in place. However, if an investigation should reveal that there were any indicators to the contrary of which the director was aware, then such legal protection vanishes. It is the ultimate duty of the company director to ensure that a compliance program is in place, and that it is functioning as specified by the law. A failure to do so can, and will, lead to penalties.

LTCs are required to submit an annual report to their compliance and ethics committee, specifying in detail how the facility or facilities have been legally compliant throughout the preceding year. Management must ensure that there is sufficient oversight of the financial aspects of the day-to-day operations of the company. This will in turn ensure that all funds originating from Medicare and Medicaid are used for the purpose intended, and in full

compliance with the law.

In this regard, the LTC's annual report must state if the organization is compliant with the following:

- A compliance committee meets and maintain records
- An institutional budget plan exists
- There are appropriate coding policies and procedures
- There are appropriate policies and procedures in place in case of overpayment
- There is a comprehensive conflict-of-interest policy
- There is a written policy on gifts and gratuities
- There are clearly defined policies and procedures on waivers of co-payments and deductibles
- Compliance audits are regularly carried out
- Compliance risk assessments are developed which incorporate all the relevant aspects of the demands made by federal and state regulatory agencies
- The compliance committee, and the compliance officer in particular, maintains complete knowledge of current regulatory changes and interpretation of laws
- There is ongoing compliance education for all staff
- The compliance program's effectiveness is continually evaluated and reviewed for any lapses
- All budgetary estimations are as accurate as possible

The annual LTC compliance reports must show that the facility has taken all measures possible to ensure a suitable level of care is provided to residents—keeping in mind that a failure to do so constitutes a serious breach of Medicare and Medicaid rules.

LTCs are required to meet minimum duty of care rules, and to highlight in all reports exactly how this duty of care has been guaranteed and maintained. At a minimum, the annual assessment has to demonstrate that the LTC has the following:

- Written compliance and ethics standards, policies, and procedures capable of reducing the prospect of criminal, civil, and administrative violations and promoting quality of care
- Designation of an appropriate compliance and ethics program contact to which individuals may report suspected violations, as well as an alternate method of reporting suspected violations anonymously without fear of retribution
- An assurance that all policies and procedures address the compliance role in quality of care issues
- Written policies which clearly define the different categories of abuse and neglect, and are spelled out to all personnel so that there can never be any doubt about what constitutes lack of care
- Disciplinary standards that set out the consequences for committing violations for all staff, contractors, and subcontractors
- The use of monitoring and auditing systems reasonably designed to detect criminal, civil, and administrative violations
- A process whereby all reasonable steps are taken to respond appropriately to prevent the reoccurrence of any violation, including any necessary modification to the LTC's oversight structure
- A due diligence process which must include regular and ongoing checks to ensure that all personnel, contractors, and subcontractors are not on the federal exclusion lists
- A written code of conduct exists, and all personnel, contractors, and subcontractors are aware of this code and their legal obligations to adhere to it.
- Codes of conduct are part of ongoing training and education

A failure to adhere to the standards of care can lead to severe consequences for the individuals involved and also for the LTC.

The final component of an annual compliance assessment is proving that all reasonable steps have been taken to avoid fraud, waste, and abuse. As was the case with company directors, the facility's duty to avoid fraud, waste, and abuse is subject to the "good faith" test. This is an acknowledgement on the part of the state that it might be impossible to prevent malicious instances of fraud, waste, and abuse. In order to avoid liability, the LTC should show that all possible attempts were made to avoid such instances.

However, this defense will only work if the LTC can show—as detailed in its annual

compliance report—that it has:

- Written compliance and ethics standards, policies, and procedures capable of reducing the prospect of fraud, waste, and abuse
- High-level personnel with substantial control over the operating organization who oversee the compliance rules
- The designation of an appropriate compliance and ethics program contact to whom individuals may report suspected violations, as well as an alternate method of reporting suspected violations anonymously without fear of retribution
- Suitable disciplinary and enforcement procedures and policies which are designed to avoid instances of fraud, waste, and abuse
- A suitable and ongoing training program designed to teach all personnel, including contractors and subcontractors, the principles of the company's compliance and ethics program standards
- A regular review and revision program designed to ensure that the compliance and ethics program reflects all changes in laws or regulations
- A detailed record retention policy
- That periodic organizational risk assessments are carried out, including the provision of human resources and management with training to recognize compliance risk associated with employee misconduct
- All instances are reported in a timely manner to the relevant authorities along with any disciplinary steps which might be taken

A failure to adhere to these basic standards can lead to serious penalties, including criminal and civil liability.

## New, NAB/NCERS Approved Series On Data Security Now Available

This Data Security Program for Long-Term and Post-Acute Healthcare Professionals presents core knowledge for leaders in the field of long-term care management with regard to data security requirements. The information in the six modules in the series provides foundational and advanced information that enables leaders to establish data security programs by knowing what is required of them, their data security officer, their facility, and their staff. Upon completion of the program, learners will be able to demonstrate their proficiency, knowledge, and skill in the area of data security and program oversight for both resident and staff private information.

For information on ordering this new series on Data Security click on the link below that will take you to the Med-Net Concepts Store.

<https://mednetcompliance.com/store/product/nab-ncers-approved-course-on-data-security/>

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