



VALLEY VIEW

PeopleCare.

That's Valley View.

Cost of Regulation in our hospital



Federal & State Regulations Impact on Healthcare

- Impact of Healthcare Fraud and Abuse
 - Key Federal Agencies with Authority to Identify Healthcare Fraud and Abuse
 - Department of Health & Human Services, Office of the Inspector General (OIG)
 - Department of Justice (DOJ), Criminal and Civil Divisions
 - Yates Memo 09.09.2015 – Individual Accountability for Corporate Wrongdoing
 - 2018 Investigations – Physician and Hospital Focus

Mandated Compliance Programs

- March 23, 2010 Affordable Care Act (ACA) Healthcare Reform Bill signed
- Compliance Programs became MANDATORY as a condition of enrollment in Federal healthcare programs (Medicare, Medicaid)



Mandated Compliance Programs

- 2017 – New Guidelines from Department of Justice
 - Focus on three (3) overarching areas:
 - Company Culture
 - Focus on behavior of senior and middle management
 - Compliance Structure and Resources
 - Effectiveness of Company Policies & Procedures



Mandated Compliance Programs

- 2017 - Measuring Compliance Program Effectiveness (Office of the Inspector General) – **53 pages** of “Guidance”
 - 7 Key Elements of an Effective Compliance Program
 - Standards, Policies, Procedures – **62** criteria
 - Compliance Program Administration – **68** criteria
 - Screening and Evaluation of Employees, Physicians, vendors and other Agents – **40** criteria
 - Communication, Education, and Training on Compliance Issues – **46** criteria
 - Monitoring, Auditing and Internal Reporting systems – **77** criteria
 - Discipline for Non-Compliance – **34** criteria
 - Investigations and Remedial measures – **71** criteria

Recent Federal Investigative & Case Trend in Healthcare (DOJ)

- **727 cases-645 involved Qui-Tam**
 - \$2.8 Billion recovered last year (2018)
 - \$2.5 Billion Healthcare Fraud
 - \$2.1 Billion Qui Tam
- **Kalispell Regional** - \$24M, non-FMV contracts with MDs
- **Prime Healthcare Services** - \$65M, upcoding, falsifying patient diagnoses, inpatient vs. outpatient status
 - **Whistleblower** – former Director of Performance Improvement at one of the hospitals

Recent Federal Investigative & Case Trend in Healthcare

- **Reliant Rehabilitation Holdings, Inc., 6.1M**
 - Offering inducements by providing nurse practitioners to referring nursing homes for free or below FMV
 - Providing physicians improper contracts for above FMV for supervision and collaboration with NPs
 - Whistleblower was a physician

Key Federal Laws

- **Anti-Kickback Statute**

- **Prohibits** asking for or receiving anything of value to induce or reward referrals of Federal health care program business. (*knew or should have known*)
 - ACA revised the “intent” requirement of the AKS by providing that “...a person need not have actual knowledge, or specific intent to commit a violation”
- Penalties
 - **Criminal (Felony)**
 - Up to **10 years in Prison** and/or
 - **Fines** up to **\$100,000** for **each violation**
 - **Civil Penalties**
 - Fined up to **3 times the Government’s loss**
 - Administrative civil money penalties up to **\$50,000 for each violation**
 - **Exclusion** from participation in Federal health care program
 - **Invokes False Claims Act** Liability (Civil Statute)



Key Federal Laws

- **Patient Inducement Regulations under the Anti-Kickback Statute**
 - **Prohibits** makes it a crime for individuals offer or transfer to a Medicare or Medicaid beneficiary any remuneration that the person knows or should know is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier of Medicare or Medicaid payable items or services..
 - **Civil Penalties**
 - Up to **\$15,270** (inflation adjustment) per item or service for a beneficiary who is offered/received remuneration in violation of prohibition.
 - **Under the Anti-kickback Statutes (“AKS”) – Civil Money Penalties**
 - **Invokes False Claims Act Liability (Civil Statute)**
 - **Exceptions include**
 - **Inexpensive gifts** or services that have a retail value of no more than **\$15 individually, and no more than \$75 annually per patient**
 - **Local Transportation**
 - **Charity**



Key Federal Laws

- **Physician Self Referral (Stark) Law**
 - **Prohibits** a physician (or immediate family member of physician) from making referrals for “designated health services” covered by Medicare to an entity with which the physician (or immediate family member of physician) has a financial relationship
 - **unless the financial relationship satisfies an exception to the Stark Law**
 - **Hospital may not bill Medicare for improperly referred designated health services**
 - Penalties
 - **Civil Penalties (No “INTENT” Required)**
 - Refund of money collected by provider that received referral
 - **Invokes False Claims Act** Liability (Civil Statute)



Key Federal Laws

- **False Claims Act**

- **Prohibits** the submission of false, fraudulent, or misleading claims to any Federal healthcare program or other third party payor.

- Civil Penalties

- Not less than **\$11,181** and not more than **\$22,363 PER CLAIM**, plus

- **3 times the Government's loss**

- Exclusion from participation in Federal health care program

- **Qui Tam Plaintiff (Whistleblower/Relator)**

- 15-30% of settlement