

HEALTH LAW

ALERT

August 2011



Ruskin Moscou Faltischek's Health Law Capabilities:

- Strategic Planning
- Corporate Reorganizations, Mergers and Joint Ventures
- Federal and State Regulation Compliance, including HIPAA
- Purchases/Sales of Hospitals and Practices
- Intellectual Property Issues
- Contracts - Managed Care, Insurance, Management and Employment
- Equipment Acquisitions
- Certificates of Need
- Professional Licensing and Disciplinary Proceedings
- Hospital and Physician Privilege Disputes
- Creation of Compliance Plans and Fraud Detection Systems
- Anti-Referral Law Counseling
- Formation at PCs, LLCs and Shareholder Agreements
- Defense of Medicare/Medicaid Investigations

For additional information on this or any health law related issue, please contact RMF's Health Law Department co-chairs: Alexander G. Bateman, who can be reached at 516-663-6589 or abateman@rmfpc.com or Jay B.

OMIG GETTING SERIOUS ABOUT COMPLIANCE PLANS

Despite our prior urgings to health care providers (especially nursing homes and home care agencies) to establish "effective compliance plans," that advice has often gone unheeded. Currently, some providers are content to have "paper" compliance plans that are either outdated or poorly implemented – or none at all..

The game has now officially changed. OMIG's Matt Babcock and his compliance team, headed by Carol Booth, are intending to audit providers' individual compliance plans – especially providers who were required to have such plans in place as of October 1, 2009. To verify compliance, Ms. Booth and her staff will conduct both *announced* and *unannounced* visits. Should you be unlucky enough to be selected for this review, OMIG will ask you to produce a list of documents (see directly below) and make available for interview various employees from the CEO to "randomly identified staff." These interviews will address, among other things, the employee's knowledge of the company's compliance program.

You need to be prepared for these compliance audits. If you're audited and "FAIL", you will be required to bring your compliance program into compliance with the OMIG regulations – and you will face a penalty.

If you have not yet done so, now is the time to update your compliance procedures using OMIG's Compliance Assessment Tool (which can be found on the OMIG website) as a template. Or, if you prefer, our professionals can assist you in reviewing and updating your compliance plan. It simply makes good business sense to avoid OMIG penalties by reviewing and updating your compliance plan today.

For more information, please contact Gregg Naclerio, Senior Member, Health Law Department and Co-Chair, White Collar Crimes and Investigations practice at Ruskin Moscou Faltischek, P.C. at (516) 663-6633 or gnaclerio@rmfpc.com.

OMIG Effectiveness Review Process 2011-07

Materials Due by Date of Delivery:

Section 1. Contact Information – name address and telephone number of:

1. Compliance Officer
2. CEO and COO
3. Chair of the governing board and
4. Chair of the governing board committee with oversight responsibility for compliance activity.

Section 2. Material Request

1. Copy of Compliance Plan, Code of Conduct and Business Ethics (including table of contents and index).
2. List of employees working in the compliance function, their titles, their time with the company and the job description and resume of the Compliance Officer
3. Copy of any compliance training materials, including videos or modular formats.
4. List of methods available to communicate to the compliance officer, including any confidential or anonymous methods.
5. Copy of any applicable policies and procedures implementing the compliance function, to include, but not be limited to, any disciplinary policies to enforce the compliance function.
6. List of management and governing board compliance/risk management committees and their charges.
7. Copies of policies and procedures describing how the organization responds to compliance issues.
8. Copy of any policies and procedures addressing non-intimidation and non-retaliation for those who in good faith participate in the compliance function.
9. Copy of the organization chart showing the reporting relationships between the Compliance Officer/Compliance Officer and senior management and the governing board.
10. Complete the COMPLIANCE PROGRAM ASSESSMENT TOOL – Focused Reviews form that is attached.
11. Name, contact information, federal identification number of the service bureau that the Provider uses, if any. (Service bureaus are defined in 18 NYCRR §504.9). If you use a service bureau, please complete the attached SERVICE BUREAU/THIRD PARTY BILLING SURVEY.

Materials to be Reviewed on Date of Site Visit

Section 3. Material Request for Production at Site Visit

1. Copy of board meeting minutes or excerpts to see how compliance issues are raised to the level of the governing body.
2. Copy of budget reports related to the compliance function to evaluate the level of resources provided for the compliance function.
3. Records or logs containing investigations of potential compliance issues included, but not limited to employee retaliation.
4. Copy of staff compliance committee meeting minutes and recommended actions.
5. Copy of hot line calls or logs to the compliance hot line.
6. Description of intranet/communication system utilized to disperse compliance information throughout organization.
7. Copy of employee or contracted provider roster for those involved in any patient care activity or billing activity.
8. Copy of patient registration information that communicates to patients and their families about Compliance Officer and billing.
9. Copy of policies and procedures used to identify, assess and return any overpayments received from the Medicaid Program.
10. Copy of policies and procedures to address:
 - a. billing for services provided to deceased beneficiaries after the date of death.
 - b. checking for excluded providers.
 - c. checking credentials (including licensure) for anyone involved in direct patient care.
 - d. auto reorder/refills, if applicable.
 - e. card swipe responsibilities, if applicable. List of all contracted services providers.
11. Copy of the last two years' compliance self assessment tool and any plans of correction developed to address areas identified in the self assessment as needing improvement.
12. Other materials as requested.

Section 4. Interviews/meetings during site review

1. Meeting with Chief Executive Officer or senior management designee involved with compliance matters.
2. Meeting with Compliance Officer and compliance staff.
3. Meeting or telephone conference with governing board committee chair with responsibility for compliance issues.
4. Randomly identified staff to inquire on education and training on compliance program.
5. CFO or other finance and/or billing staff to discuss controls and budgets.
6. Risk manager, if any to discuss interaction with compliance function.
7. Human Resources Director/management to discuss potential issues associated with intimidation or retaliation.
8. Tour of facility.