Conducting Baseline Risk Assessments

Critical Initial Step in Compliance Program Design

Risk Assessment

Chapter 8 – 2007 Federal Sentencing Guidelines – Effective Ethics and Compliance Program

"(B) to evaluate periodically the effectiveness of the organization's compliance and ethics program;

> c) In implementing subsection (b), the organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement set forth in subsection (b) to reduce the risk of criminal conduct identified through this process."

US Sentencing Guidelines

- Written standards of conduct

- High level individuals responsible to oversee compliance

- Due care taken not to delegate to those who may engage in illegal activity

- Effective training and education

- Monitoring systems and hotlines

- Disciplinary systems

- Reasonable steps taken to respond appropriately to detected offenses.

Baseline Assessment

- The OIG recommends that when a compliance program is established …the compliance officer,, take a "snapshot" of the organization's operations from a compliance perspective. This assessment can be undertaken by outside consultants, law or accounting firms, or internal staff, with authoritative knowledge of health care compliance requirements. This "snapshot," often used as part of bench marking analysis, becomes a baseline for the compliance officer and other managers to judge the …organization's progress in reducing or eliminating potential areas of vulnerability.

The Baseline Assessment

- Benchmarks the organization
- High level review of the state of compliance within your organization – what does high level mean?

THIS IS NOT AN AUDIT!!

- Term of art – don't misuse in describing your activities
  - Rigorous standards
  - Written protocol
  - Extensive Preplanning
  - Very expensive

Designing the Baseline

- Can be done internally or by external consultants. How do you decide?
  - Need a team: financial, operational, reimbursement, documentation experts
  - Familiarity with regulation and law
  - Independence
  - Who do you think employees will talk to?

The Baseline Assessment

■ Attorney-client privilege
- – Do you have a health care attorney?
- – What do they suggest?
- – Does the organization understand the potential limitations of the privilege?
- – Does the organization understand how to protect the privilege?

The Baseline Assessment

- Develop a written inventory of services and entities
  - Every service owned by the organization
  - Every entity owned or operated by the organization
- Look for joint ventures, lead agency contracts, at risk contracts with other organizations, partnerships, etc.

The Baseline Assessment

- Create an abstract for each – don't drive yourself nuts with detail yet

- Decide which entities/services the compliance program will cover.

- Do you have the authority to impose a compliance program on a particular entity?

Sample Abstract

Program	Management	Services	Target Population	Funding	Sites/Census/Budget	Reporting Requirements
Outpatient Mental Health	Clinical Director: Ms. P Site Directors: North: Mr. T West: Mr. Z East: Ms. M	Partial Day Treatment Individual, Family Therapy	Adults and Children Currently: 1500 open cases	Medicaid: $4 mm Medicare: 500k Grant in Aid: 2mm Private Ins: 200k	North: 300 clients, $2mm West: 1000, $3.5 mm East: 200, $2.2 mm	FFS claims Cost report annually grant in aid
Family Stabilization	Joint Venture with UBHN, they are lead agency. Contact Person: Mr. U	Community-based crisis intervention. We provide parent aides.	Families in crisis	DSS: $300k to us. Total budget is: $6mm	East	FFS claims to UBHN. UBHN responsible for cost report to DSS.

The Baseline Assessment

- Subcontractors: do you have any? List name, size and subcontracted services, contact persons on both ends. Think carefully – who provides services that you bill for, e.g. foster parents

- Independent contractors: do you have any? List name, size, contracted services, contact information.
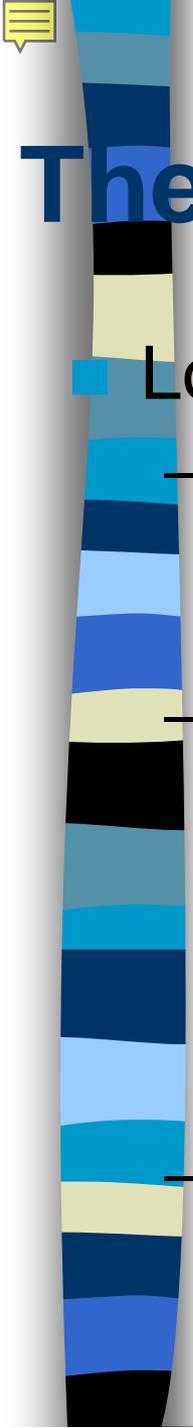
The Baseline Assessment

- Determine which services, entities, subcontractors, independent contractors your compliance program and, therefore, your baseline, will cover.

Organizational Charts

- Use these to help you understand the reporting structures
  - Silos
  - Site-based management
- Key organizational Roles
  - Program-based
  - Administration-based
 - Support-based

The Baseline Assessment

- Looks at:
  - Culture
    - Level of internal understanding of regulation and law
    - Attitude of the organization toward regulation and law
  - The functionality of systems:
    - How are they designed? Walking through.
    - Are they capable of working?
    - The gap between regulation, organizational policy and actual practice – macro view
    - Internal controls: are they working? Who is cheating?
  - Transaction outcomes: is the system working?
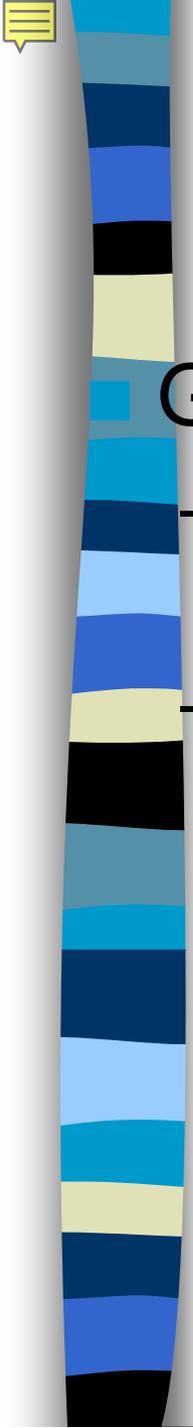
The Compliance Creed

Good practice is not coincidental.

– If you have good records, you are probably training and have good controls in place.

– If you don't have training or internal controls, you will not have good records.

- If in a situation with no training or good internal controls, you find good records, then assume they were fixed prior to your review, you have an outlier, or the organization is not recognizing certain controls that are contributing to the success of the organization

Components of the Assessment

- System Reviews and Interviews
- Review of transactions and of records
- Debriefing
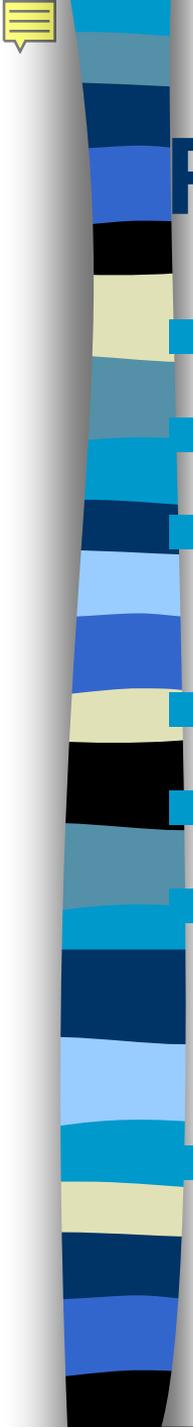
Pre-Baseline Questionnaires

- An option only, creates a two step process
- Should be relatively non-threatening
- Sets the stage by giving you basic info, you can then query further
- Looking for recognition of internal controls
- Is there agreement on standards
- What kind of information is being produced? Who produces, keeps it, sends it out, and to who does it go?
- Looking for areas of risk – highlight areas of concern

Pre-Baseline Questionnaires

- If possible, schedule some group answers to questions:
  - Clinical staff
  - Direct Service Staff
  - Billing/Front Desk

- Have them note where they do things differently – variation may create risk or offer opportunities to identify and transfer best practices.

Instructions

- Tell people to answer in the way they feel most clearly &accurately describes the procedure or process – flow chart, narrative, combination, etc.
  - Some of these may be keepers for your procedure manuals or as compliance aids
- Ask them to show the task in detail, but to use their head

Instructions

- MOST IMPORTANT: This should describe what you do most of time – not what you are supposed to do.
- Ask for forms and documents

Interviews and Questionnaires

- The rules:
  - Request openness and honesty
  - Deal with attribution
  - Non-judgmental
  - Determine how you will deal with requests for TA or answers to questions

Example of Pre-Baseline Questionnaire

Interviews: Who?

- Administration:
  - President, CEO, Executive Director
  - Chief Operating Officer/Clinical Director
  - Medical Director
  - Chief Financial Officer
  - Utilization Manager
  - Quality Improvement
  - Head of Reimbursement
  - Contracts Manager
  - IT Director
  - Human Resources
  - Training

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Interviews

Programs by Title:
- Program Managers
- Clinical Supervisors
- Medical Staff
  - MDs
  - CNSs
  - Nursing

Clinical staff by program type:
- Crisis Programs
- Day programs
- Outpatient programs
- Residential programs
- Case management programs
- Vocational programs

Interviews

- Support Staff
  - Front desk
  - Billing clerks
  - Central Access: program and support
  - Reception/Intake

Interviews

- Subcontractors:
  - By service type
  - Large vs. small – look at risk
  - Make sure you are interviewing the in-house staff person responsible for them

- Independent Contractors
  - By service type
  - Direct service only?
    - Look at risk
  - Make sure you are looking at the system for hiring and supervising these people

Interviews

- What are you looking for?
  - To determine if individual employees:
    - Understand the regulations
    - Have a healthy attitude toward the regulations
    - Believe they know how to do their job
    - Know where there are gaps between what is supposed to be done and what is being done – the dirt

Interviews

- ■ What are you looking for?
  - – To determine if individual employees
    - • Have reported problems before – if not, why not
    - • Believe that they are adequately trained
    - • Believe that you are providing quality services – if not, why?
    - • Believe that the organization has high ethical standards – if not, why not?
    - • Believe that the organization is retaliatory

Interviews

■ What are you looking for?

– Systemic Issues:

- Contradictions between one level of organization and another – yes they are doing it, no we are not
- Strained relations between one area and another that may increase risk
- Corporate culture issues that will impact compliance
- Program weaknesses: we do our part, but they don't do theirs

The Schedule

Community Mental Health Center Baseline Assessment Interview Schedule			
Dates			

Date	**Team Member I**		
8:00 AM			
8:30 AM	Training Managers		
9:00 AM			
9:30 AM			
10:00 AM			
10:30 AM			
11:00 AM			
11:30 AM			
12:00 PM			
12:30 PM			
1:00 PM	Lunch		
1:30 PM	Compliance Committee: Executive		
2:00 PM	Leadership Committee		
2:30 PM			
3:00 PM	Adult Mental Health Outpatient		
3:30 PM			
4:00 PM	Clinical Support Manager		
4:30 PM			
5:00 PM			
5:30 PM			
6:00 PM			

The Schedule

Date	Team Member I	Team Member II	Team Member III
8:00 AM			
8:30 AM	Coordinator of Extended Care	Chief Financial Officer	Billing Clerks
9:00 AM			
9:30 AM	Executive Director		Group Front Desk Staff
10:00 AM			
10:30 AM			
11:00 AM	Supervisor Crisis Treatment Unit		Billing Supervisors
11:30 AM			
12:00 PM	Lunch	Lunch	Lunch
12:30 PM			
1:00 PM	Director Adult Services	Human Resources	Medical Director
1:30 PM			
2:00 PM	Group Supervisors Kids Day Tx	Information Systems	Psychiatrist
2:30 PM			
3:00 PM	Director Adult Substance Abuse	Supervisor of Office Specialists	Nursing Staff
3:30 PM			
4:00 PM	Supervisor Family Advocates	Intake Specialists	Coordinator Youth Day Treatment
4:30 PM			
5:00 PM			
5:30 PM			
6:00 PM			

The Schedule

Date	Team Member I	Team Member II	Team Member III
8:00 AM	Supervisors Adult Day Treatment	Supervisor Interagency Committee	Coordinator Outpatient Kids
8:30 AM			
9:00 AM	Coordinator Outpt Sub Abuse	Prevention Specialist	Kids Residential Coordinators
9:30 AM			
10:00 AM	Group Adult O/Pt Clinical Staff	Utilization Management	Group Kids Therapists
10:30 AM			
11:00 AM	Group Extended Care Workers	Quality Improvement Coordinator	Supervisor Case Management
11:30 AM			
12:00 PM	Group Adult Sub Abuse Clinical Staf	Hallie Backus - Ins Specialist	Group Kids Case Managers
12:30 PM			
1:00 PM	Lunch	Lunch	Lunch
1:30 PM			
2:00 PM	Report Preparation	Report Preparation	Report Preparation
2:30 PM			
3:00 PM			
3:30 PM			
4:00 PM	Debriefing	Debriefing	Debriefing
4:30 PM			
5:00 PM			
5:30 PM			
6:00 PM			

System Review

- Think about where you want to look:
  - Service Delivery
  - Client/Provider Eligibility
  - Documentation: medical and other
  - Reimbursement
  - Hiring/Salary Structure
  - Quality Assurance
  - Conflict of Interest
  - Third Party Liability

System Review

- What are you looking for:
  - Does everyone understand their roles?
  - Do people understand the impact of their roles on others in the organization
  - Do people know and understand the regulations?
  - Are there adequate resources/technical assistance available?
  - Have people been trained?
  - What internal controls are there?
    - Are they working? Are people cheating?
  - Is the system capable of producing desired outcomes

Billing Function

1. Control contracts with billing companies, outside coding, and other consultants.

2. Controls employee contracts including productivity, work hours, salaries, and method of payment, e.g. fee for service.

3. Controls constracts with independent contractors

4. Assigns and controls number of supervisory staff including M.D.s

5. Determines resources given to staff education/training.

completes?
What choices?
Is the crosswalk correct?
Have local codes created poor coding practices?

Management

Supervising/ Certifying or Referring Physician

Provides a service and documents

Must be eligible. Provides the service and documents

Coding

Provider

Billing Staff

Front Desk

High Risk: more responsibility than power

Verifies eligibility, data integrity, collects co-pays & deductibles, sliding fee scale determination, ABNs

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System Reviews

- May duplicate some of info you are getting in pre-baseline activities so review carefully

- Look at policies and procedures

- Review training: what are employees being told to do?

- This is an opportunity to ask opinions – use it

Questions Answered in System Reviews

- Determining regulatory environment: how well do participants know your programs and the regulations that govern them?

  - Most important question: Where do you believe the organization is at greatest risk for compliance? In their area or others

- Evaluating Risks:

  - Has anyone ever told the organization it is doing things wrong

Questions Answered in System Reviews

- Evaluating Risks Continued:
  - Has anyone ever told the organization it is doing things wrong
    - Auditors or Accreditors
    - Employees or Clients
  - Has the organization discovered non-compliance in its own organization?
    - How
    - What it through an organized structured effort or just happenstance?

Questions Answered in System Reviews

- Evaluating Risks Continued:
  - Have you evaluated the compliance risks associated with being a non-profit organization?
  - Have you evaluated the risks associated with capitation?
  - Have you evaluated anti-kickback or Stark risks by looking at referrals?

Questions Answered in System Reviews

- Evaluating Risks Continued:
  - Have you evaluated the compliance risks associated with having subcontractors?
- Promoting compliance
  - What elements of a compliance program do you have in place already?
- Information systems: how are they used in your organization to promote compliance?

Review of Medical Records

- Sample: 5 to 20 records
  - This is not an audit, it is a high level review
  - Make sure no one has access to them before they are pulled
  - Get a couple from each program at each site – make sure you are looking at enough doc records
  - Pick out a couple for each employee you believe may be a problem already

Review of Medical Records

■ Structural Issues
  – Sections/tabs: are they there and are docs in right places
  – Face sheets
  – Filing up to date
  – Filing in date order
  – Can you find things easily

Review of Medical Records

■ General Issues
  – Legibility
  – Documents all there? Releases? Intakes?
  – Could you find the ones you wanted?
  – Was the medical record room locked? Secured in some other way?

Review of Medical Records

■ Qualitative Issues

– Legibility

– Documents all there? Releases? Intakes?

– Could you find the ones you wanted?

– Was the medical record room locked? Secured in some other way?

– Other consistent findings?

Review of Medical Records

- **Program Issues**
  - Assessments: good clinical assessment and diagnosis
  - Diagnosis matches tween MD and clinician?
  - Diagnosis and assessment proves eligibility for services? Medical necessity case made?
  - Treatment Plans: dates, signatures, content, services match, etc.

Review of Medical Records

- Program Issues
  - Treatment Plans: individualized, change over time, enough meat? Progress Notes: include necessary content?
  - Progress Notes: relationship to treatment plan?
  - Do services documented match codes?
  - Do codes match billing for type of service and units of service?

# Review of Medical Records

- Program Issues
  - How long in treatment? Does this make sense?
  - Transfers to lower levels of care tried?
  - Have they been referred for meds?
  - Are they compliant with current treatment?

- This is not an exhaustive list. But this should not be an exhaustive review of the records.

Transaction Reviews

- Reviews results of systems at a particular point in time
- Audit process or tests
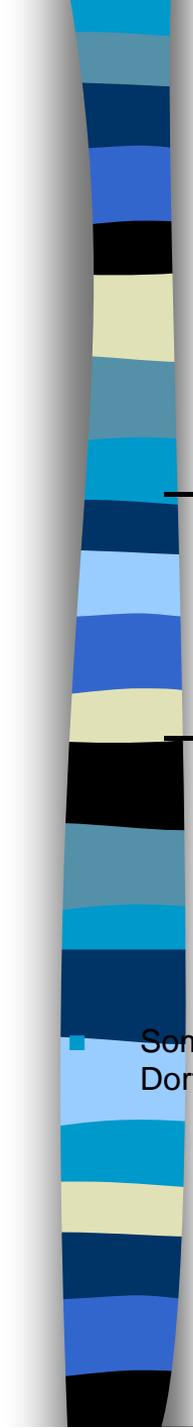
Examples*: Compliance Training and Program Development

– System Review: Consider a walk-through of the entire process. How is content determined? Who approves? Is content and are requirements codified in P&P?

– Transactions: Pull random sample of employees. Did they get required training? If not was their follow-up? Post-test possibly on retained knowledge?

▪ Some of these examples taken from "Verifying Compliance Program Effectiveness in Managed Care, Cornelia Dorfschmid, HCCA Managed Care Conference

Example: **Failure to provide medically necessary services**

System Review: walk-through of documentation process, ordering services, compliance with Tx Plan, if not what happens?

Transaction Review: pull small sample of claims –review for medical necessity including relationship to Tx Plan

Example: Third Party Liability

System Review: walk-through of process for determining Individual's insurance, assignment of clinician, internal controls re: reconfirming insurance, billing appropriately, Medicaid payer of last resort

Transaction Review: pull small sample of dually eligible Individuals. Review billing, balances, assigment of clinician, etc.

Debriefing

- Very few senior people
- Use an outline format – this is not a full report
- Remind people of confidentiality
- Determine as a group how you will handle copies
- Use this as a time to prioritize and allocate resources

The Result

- A risk profile for the organization
  - These may not be all of your risks, but you will have documented your attempts to determine risk by priority
  - Often once a compliance program has started and is seen as legitimate, more risk areas will be revealed by employees
- An opportunity for management to show: willingness to listen, non-retaliation, determination to not blame, but act