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Section 1: Introduction

Course Contributor
This course was written by Myrna McCreery, MAEd. Ms. McCreery has more than 28 years of experience in healthcare, business administration, and education. She was business administrator and staff trainer in the health insurance industry, reading program facilitator for a Native American school system, as well as the direct care provider and agency trainer in public mental health care. She draws upon her experiences from
underwriting, marketing, and teaching challenged and second language learners to inform her curriculum development. Ms. McCreery believes the important difference between adult training and youth education is that adults need for their educational training to have a direct connection to their current life experience. Ms. McCreery holds a Bachelor of Arts degree in Elementary Education from the University of Montana, Reading Endorsement in Arizona, and a Masters of Arts in Adult Education from University of Phoenix.

About This Course
Corporate compliance programs are a well-established means of defining ethical behavior, fraud and abuse in health care organizations. However, what you really want to know is how these definitions translate to your day-to-day professional life. What should you do, and what protections are there for you, if you report something that doesn’t seem quite right?

By enhancing your knowledge regarding the definition of ethics, health care fraud, and best practices in identifying high-risk activities, this course prepares you to contribute to an ethical and compliant environment in your agency. Included in the course are exercises that will help you to identify and explain the elements of corporate compliance, as well as how to report suspicious activities. Based on information from the Department of Health and Human Services, the material in this training is appropriate for entry-level health care professionals as well as those with advanced practice.

Learning Objectives

After completing this course, you should be able to:
- Define Corporate Compliance and explain how it benefits organizations.
- Summarize the fundamentals of ethics and health care fraud.
- Identify high-risk activities and your role in reporting them.

Section 2: Compliance and Ethics Overview

Meet Tomas
Tomas is a 24 year old male coworker, who just enthusiastically shared with you an intervention he developed to assist his mental health client in starting a haircutting business. Tomas is very excited to report he and his client have been meeting biweekly for an “off the books” arrangement where the client gets to practice cutting Tomas’ hair and Tomas pays the client a nominal fee. Tomas reports the client is doing such a good job he is going to refer a couple of his buddies. The client is feeling empowered and meeting other treatment goals as a result of the intervention. Tomas states he is billing for these sessions as basic case management since the haircutting business is one of the client’s treatment planning objectives.

What are the issues with this intervention and what should you do to address them?

Although Tomas is really thinking outside-the-box with his client to promote self esteem
and support treatment goals, this is an ethical concern and likely an example of fraudulent billing. It is never appropriate to exchange services or payment with clients. It is critical that Tomas’ activity is reported to your organization’s compliance officer so that corrective action begins to void billing submissions and hopefully avoid penalties for services not appropriate for reimbursement. You may encourage Tomas to self-report, but it is your responsibility to see that the issue is escalated for review. Learning the information in this course will help you to avoid potentially inappropriate situations like these.

What Does "Corporate Compliance" Mean?

Background Information

In 1997, the Office of the Inspector General of the Department of Health and Human Services initiated a program to promote the identification and investigation of health care fraud and abuse. As a result of this government requirement, health care organizations have developed Corporate Compliance Programs.

U.S. Department of Health & Human Services
Office of the Inspector General

Corporate Compliance Defined

“Corporate Compliance” is a system of effective internal controls that promote adherence to federal and state law; program requirements of federal, state, and private health plans; and ethical behavior.

Goal & Purpose

What is the goal of Corporate Compliance programs?
To establish a culture that promotes prevention, detection and resolution of instances of conduct that do not conform to law as well as an organization’s ethical and business policies.

What is the purpose of Corporate Compliance programs?
To create a system of checks and balances to DETER, DETECT, and PREVENT fraud, abuse, and mistakes.

Benefits of Corporate Compliance Programs

Effective corporate compliance programs benefit organizations by:
- Demonstrating a strong commitment to being an honest and responsible provider with appropriate corporate conduct.
- Identifying and preventing criminal and/or unethical conduct.
- Developing methodology that encourages employees to report potential problems.
- Developing procedures that result in prompt, thorough investigation of alleged misconduct, and providing for corrective actions.
Section 3: Components of Corporate Compliance

Ethics
An effective compliance program promotes an organizational culture that encourages ethical conduct as well as a commitment to compliance with laws, regulations, and policies.

Such a program articulates a broader set of ethical standards which employees understand and use as practical guidelines for decision making and conduct.

“ETHICS” refers to well based standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues.

More on Ethics

COMPLIANCE
WHAT IS LEGALLY REQUIRED
CAN I DO THIS?

ETHICS
WHAT IS RIGHT.
SHOULD I DO THIS?

Knowing expectations and never compromising integrity regardless of pressures faced results in ethical behavior. Ethical business and clinical decisions promote an organization’s value system. Ethical business practices include accurate billing procedures, accurate filing of claims, and reporting abuses of the system.

Compliance Program Components

There are Seven Components to a Corporate Compliance Program.

1. Written Policies and Procedures:
Establish written compliance policies and procedures which are distributed to all employees. These policies and procedure include standards of conduct, investigations, corrective action and reporting protocol. Evaluation and modification of these policies and procedures is an integral part of any compliance program.

2. Compliance Officer and Committee:
Establish responsibility by designating a Compliance Officer (CCO) and a Compliance Committee from high-level personnel.

3. Mandatory Compliance Training:
Provide mandatory education through a formal compliance training program for all employees, officers, managers, supervisors, board members, long-term temporary employees, and possibly contractors. Informal on-going training must also be provided.
4. Anonymous and Effective Lines of Communication:
Develop an internal system for reporting suspected non-compliance.
- This is often accomplished by establishing an Anonymous Corporate Compliance "Hot-Line" and providing "drop-boxes."
- An "open-door" policy for employee access to the CCO is also recommended.
- Communication is also enhanced by including compliance questions in each employee's annual evaluation.

5. Auditing and Monitoring:
Develop an extensive internal audit and monitoring system to ensure compliance. The monitoring system should determine whether recommendations and corrective action plans have been implemented.

6. Investigation and Enforcement Process:
Investigations should be conducted in a timely and confidential manner for all suspected compliance breaches. Disciplinary policies should include sanctions for actual non-compliance, for failure to detect non-compliance, and for failure to report actual or suspected noncompliance. The organization must also use care to avoid delegating substantial discretionary authority to individuals whom the organization knows, or should have known, have a propensity to engage in illegal activities.

7. Corrective Action Process:
Organizations should respond to non-compliant conduct and take steps to prevent further similar conduct. Modifications of the Corporate Compliance system may be made in response to a risk assessment of potential criminal behavior.

Setting the Tone at the Top

"Beginning with an employee's first day of work, he or she should know that ethics and honesty are important to the company. [It is] Not enough to have a code of conduct...ethics must become part of the company's DNA."

Stephen Cutler
Former SEC Director of Enforcement

Definitions of Fraud and Abuse

Below are definitions and examples of fraud and abuse.

**Fraud**
Health care FRAUD is the knowing and willful execution, or attempt to execute a scheme to defraud a health care benefit program to obtain, by means of false or fraudulent representation or promise, any money or other property owned by a health care benefit program.

DID YOU KNOW, DURING FISCAL YEAR (FY)2010, A TOTAL OF 726 DEFENDANTS WERE CONVICTED FOR HEALTH-CARE-FRAUD-RELATED CRIMES DURING THE YEAR?
Abuse
ABUSE generally encompasses incidents or practices that are inconsistent with sound fiscal, business, or medical practices that may result directly or indirectly in unnecessary program costs, improper payment, or payment for services that fail to meet professional standards of care, or that are medically unnecessary.

DID YOU KNOW, DURING (FY)2010, THE FEDERAL GOVERNMENT WON OR NEGOTIATED more than $4 BILLION IN JUDGMENTS AND SETTLEMENTS IN HEALTH CARE FRAUD CASES AND PROCEEDINGS?

High-Risk Activities
Activities that are at high risk for violations according to the Federal government include:
- False claims (up-coding or down-coding the billing code to obtain higher payment).
- Fraudulent billing (billing for services not provided or not necessary).
- Taking bribes or kickbacks, or giving excessive discounts (receiving gifts from other interests that could indicate an incentive to do business with them).
- Payment to other parties to induce referrals.
- Providing service without a valid license.
- Submitting a claim with inadequate documentation to support the amount billed.
- False documentation to support and bill for a service never rendered.

Let's Review: Compliance

Effective lines of communication is an external system for reporting suspected non-compliance, done through faxing/mailing forms to the United States Sentencing Commission.

- True (Incorrect. Effective lines of communication is an internal system for reporting suspected non-compliance. This is often accomplished by establishing a Corporate Compliance “Hot-Line” and providing “drop-boxes.” An “open-door” policy for employee access to the CCO is also recommended.)
- False (Correct! Effective lines of communication is an internal system for reporting suspected non-compliance. This is often accomplished by establishing a Corporate Compliance “Hot-Line” and providing “drop-boxes.” An “open-door” policy for employee access to the CCO is also recommended.)

Section 4: Investigations

Investigations and Penalties

Health care fraud and abuse is prosecuted under the Federal False Claims Act. This Act prohibits a person or entity from knowingly presenting—or causing to be presented—claims or false records or statements to the Federal government in order to get payment for a false or fraudulent claim.

Civil penalties can range from $5,500 to $11,000 per claim plus three times the amount of damages sustained by the Federal government. In addition to monetary fines,
organizations can be excluded from Medicare and Medicaid programs, and CEOs and Boards can be subject to criminal penalties.

**The Deficit Reduction Act and the Medicaid Integrity Program**

To offset health care fraud and abuse the Deficit Reduction Act (DRA) was passed and from this, the Medicaid Integrity Program (MIP) was developed. From 2009 on, the MIP budget for identifying and recovering inappropriate Medicaid payments is $75 million per year. As a result, there is more Federal scrutiny of health care providers, more audits and investigations, and more paybacks.

This increased oversight has resulted in many changes. What was a billing error in 1989 may now be considered FRAUD, and investigations can result in fines that can go back to practices 10 years prior. The standard for guilt in an investigation is, “If you knew or should have known,” the fraudulent activity was taking place.

**Federal Sentencing Guidelines**

An effective corporate compliance program that demonstrates and encourages ethical behavior and compliance with legal and regulatory requirements provides a possible defense or protection for an organization.

In order to receive “credit” for good corporate behavior, the Federal Sentencing Guidelines require that organizational defendants exercise due diligence in the design and implementation of a compliance program intended to detect and deter fraud, waste, and abuse.

Note the existence of a corporate compliance program does not automatically provide protection from investigation or fines.

**Federal False Claims Act**

What is the Federal False Claims Act?

This Act prohibits a person or entity from knowingly presenting—or causing to be presented—claims or false records or statements to the Federal government in order to get payment for a false or fraudulent claim.

**Section 5: Reporting**

**Reporting**

Each employee is responsible for reporting any violation or suspected violation of corporate compliance policy.

Most organizations provide a corporate compliance “hot line” for verbal reporting.

Others have corporate compliance incident forms that can be completed and forwarded to the Corporate Compliance Officer.
Activities That Should Be Reported

Examples of fraudulent or other activities that should be reported are:
- Up-coding
- Billing for a service that has not been provided
- Billing for more time than is actually spent on the service
- Accepting bribes or inappropriate gifts
- Any violation of the ethical code of conduct

Employee Rights

An employee reporting an illegal activity is protected under Federal and State law.

The reporting person, or whistleblower, cannot be discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms or conditions of employment by her/his employer because of lawful acts done by the employee.

If any of these should occur, the employee, under the Federal False Claims Act, shall be entitled to all relief necessary to make the employee "whole."

Let's Review

Let's review what we have covered during this course with a few questions:

What is the purpose of corporate compliance?
To create a system of checks and balances to DETER, DETECT, and PREVENT fraud, abuse, and mistakes.

What is health care fraud?
The knowing and willful execution, or attempt to execute, a scheme to defraud a health care benefit program to obtain, by means of false or fraudulent representation or promise, any money or other property owned by a health care benefit program.

What are high-risk activities?
Activities such as false documentation, payment to other parties to induce referrals, taking kickbacks, and providing service without a valid license.

What offers protection from investigation or fines?
Nothing, not even the existence of a corporate compliance program.

What are ethics?
Standards of right and wrong.

What promotes a culture of ethical conduct and a commitment to compliance with the law?
An effective compliance program promotes an organizational culture that encourages ethical conduct, as well as a commitment to compliance with laws, regulations, and policies.
Who cannot be discharged or discriminated against for reporting an illegal activity?
A whistleblower.

What are some of the consequences of health care fraud and abuse?
Monetary fines, exclusion from Medicare and Medicaid programs, and criminal penalties.

Section 6: Conclusion

Summary

Now that you have finished the course, you should have learned the following:

- Corporate Compliance is a system of effective internal controls that promote adherence to federal and state law; program requirements of federal, state, and private health plans; and ethical behavior.

- The purpose of corporate compliance programs is to prevent and detect fraud, abuse, and waste by creating systems that enable organizations to operate in a compliant manner within Federal and State legal and regulatory environments.

- The seven basic elements of a compliance program are: written policies and procedures including standards of conduct; a compliance officer; mandatory education and training; anonymous and effective lines of communication for a reporting system; auditing and monitoring; investigation and enforcement process; and a corrective action process.

- “ETHICS” refers to well-based standards of right and wrong that prescribe what humans ought to do, usually in terms of rights, obligations, benefits to society, fairness, or specific virtues.

- Healthcare fraud is the knowing and willful execution—or attempt to execute—a scheme to defraud a health care benefit program to obtain, by means of false or fraudulent representation or promise, any money or other property owned by a health care benefit program.

- Abuse encompasses practices that are inconsistent with sound fiscal, business, or medical practices that may result in unnecessary program costs, improper payment, or payment for services that fail to meet professional standards of care, or that are medically unnecessary.

- Fraudulent high-risk activities include up-coding, billing for services not provided, taking bribes or kickbacks, payment to other parties to induce referrals, providing service without a valid license, submitting a claim with inadequate documentation or false documentation to support it, and billing for a service never rendered.

- The existence of a corporate compliance program is not protection from investigation or fines.
• Significantly increased resources are now available for Federal investigations.

• Federal and State laws protect “whistleblower” employees from retaliation from reporting corporate compliance violations.

References

