

**Health Care Compliance Association
Managed Care Compliance Conference**

*Assessing a Payor
Compliance Program:*

*Approach, Preparations, & Strategies for
Remediation*

Thomas D. Bixby

Thomas D. Bixby Law Office LLC

(608) 661-4310

TBixby@tbixbylaw.com

Sheila Herrington

Blue Cross Blue Shield of Alabama

(205) 220-5654

Sherrington@bcbsal.org

Topics

Why Perform Assessment?

Approach to Assessment

Preparations

Strategies for Remediation





Why Perform an Assessment?

Guidance and Requirements

Federal Sentencing Guidelines

- Periodic evaluation of program effectiveness
- React to issues: assessment & modification
- “May include . . . outside professional advisor”

Office of Inspector General

- Periodic (at least annual) review of program
- Revise program “in light of changes”

Why perform an assessment?

- Identify gaps in the compliance program
- Decrease exposure risk if an event occurs
- 3rd party assessment is independent and more objective
- Assurance to the Board of Directors on the effectiveness of compliance program
- Best Practices from assessor





Approach to Assessment

Basic Premise

- “. . . each [compliance] program must be tailored to fit the needs and resources of an individual organization, depending upon its particular corporate structure, mission and employee composition.”
- **OIG Compliance Program Guidance** (64 Fed. Reg. 61893, 61909 (Nov. 15, 1999))

Establish Requirements

Federal Sentencing Guidelines

- Standards of conduct
- Compliance oversight (Board, Officer)
- Due diligence in personnel decisions
- Training and education
- Monitoring, auditing, evaluation
- Disciplinary standards/program promotion
- Prompt, appropriate response

Establish Requirements

Specific applicable regulations

- MA/Part D
- Medicaid
- FEHBP
- TRICARE
- Other

New York Medicaid

(1) Written policies and procedures					
	Description	Yes	No	Evidence of Compliance or action required	Explanation
1.1	Are compliance expectations included in a written code of conduct or code of ethics?				

New York Medicaid

	Description	Yes	No	Evidence of Compliance or action required	Explanation
1.2	Has the compliance program been implemented within the organization?				

New York Medicaid

	Description	Yes	No	Evidence of Compliance or action required	Explanation
1.3	Does the compliance program provide guidance to employees and [contractors] on how to identify and communicate compliance issues to compliance personnel?				

Other Guidance

OIG Compliance Program Guidance

- “These principles [apply] to other Federal and [commercial] health care programs”

Part D—Chapter 9

- Part D specific provisions
- Provisions applicable to Gov’t programs
- Provisions applicable to any health plan

CMS Tool (Working Draft)

ELEMENT I: Written Policies and Procedures and Standards of Conduct			
Description	Yes	No	Evidence of Compliance or Action Required
Are your P & Ps specific and detailed in describing the mechanisms by which compliance objectives will be achieved?			
Do your P & Ps cover all major risk areas?			
Has your compliance program been implemented?			
Do you perform <u>proactive</u> oversight of FDRs to ensure they are adhering to Standards of Conduct and P & Ps?			

CMS Tool (Working Draft)

ELEMENT I: Written Policies and Procedures and Standards of Conduct			
Description	Yes	No	Evidence of Compliance or Action Required
Do your P & Ps describe in detail how potential compliance problems are investigated and resolved?			
Do your P & Ps describe with specificity how to communicate compliance issues to compliance personnel?			
Does the Board of Directors or a subcommittee of the Board of Directors review and approve Standards of Conduct and new and revised P & Ps?			

Other Guidance

CMS Audit Results (attached)

- “[MA Plan] needs to develop written policies and procedures for a detailed claims adjudication process including flow charts, claims management, data capture, claims data retrieval processes and storage of claim information for not less than 10 years.”

Other Guidance

- **OIG Workplans**
- **CMS Call Letters/other guidance**
- **Internal audit results/priorities**
- **Medicaid Best Practices**
<https://www.cms.gov/FraudAbuseforProfs/Downloads/2011pisummary.pdf>
- **Corporate integrity agreements**
<http://oig.hhs.gov/compliance/corporate-integrity-agreements/cia-documents.asp>
- **CMS presentations**

Creating a Tool

Table 1: Standards and Procedures

Requirement	Evaluation & Recommendations
1.1 “Written policies, procedures and standards of conduct that . . . Articulate the [health plan’s] commitment to comply with all applicable Federal and State standards.” 42 C.F.R. §§ 422.503(b)(4)(vi)(A)(1).	

Creating a Tool

Requirement	Evaluation & Recommendations
<p>1.1 “Written policies, procedures and standards of conduct that . . . Articulate the [health plan’s] commitment to comply with all applicable Federal and State standards.” 42 C.F.R. §§ 422.503(b)(4)(vi)(A)(1), 423.504(b)(4)(vi)(A)(1).</p>	
<p>1.1.2 Development and Maintenance of Policies and Procedures</p>	<p>Criteria. Health plan should draft policies and procedures as necessary to address risks identified in “a comprehensive . . . risk analysis . . . [that] rank[s] the various compliance and business risks the company may experience in its daily operations.” (OIG Guidance at 61897).</p>

Creating a Tool

Requirement	Evaluation & Recommendations
<p>1.1.4 Dissemination and Distribution of Code of Conduct and Policies and Procedures</p>	<p>Criteria. “[E]mployees should certify that they have received, read, and will comply with all written standards of conduct.” (Chapter 9 § 50.2.1.3).</p> <p>Evaluation.</p> <p>Recommendations.</p>



Preparations

Document Review

Code of conduct

Policies and Procedures

Job descriptions

Committee agendas, minutes

Investigation files

Document Review

Risk assessments

Audit plans

FDR oversight

Corrective action plans

Compliance logs

Document Review

Organization charts

Training material

Employee compliance with:

- Training
- Code of Conduct
- Conflict of interest

Investigations

Interviews

Compliance personnel

Supervisors—risk areas

Random employees

CEO

SVPs over risk areas

Interviews

SIU Director

Director of Audit

General Counsel

Compliance Committee

Board Audit/Compliance

Be Prepared

Organization

- Scan copies of all documentation
- Assign one person to facilitate
- Perform a review of policies & procedures for approvals and timely updates

Be Prepared

Communication

- Send current copies of code book to executives and Board members
- Explain to the interviewees the process of the assessment and the objectives
- Be honest with the auditor/assessor
- This is an opportunity for improvement of the program





Strategies for Remediation

Remediation strategies

Develop Plan

- Prioritize
- Implement significant gaps in the 7 elements
- Determine risk of accepting recommendations
- Report results

QUESTIONS

Assessing a Payor Compliance Program:

Approach, Preparations, & Strategies for Remediation

Thomas D. Bixby

Thomas D. Bixby Law Office LLC

(608) 661-4310

TBixby@tbixbylaw.com

Sheila Herrington

Blue Cross Blue Shield of Alabama

(205) 220-5654

Sherrington@bcbsal.org