Moderator: Dianne De La Mare

Speakers:  
- Ken Burgess, Partner, Poyner & Spruill, LLP  
- Cheri Battee, Senior Vice President of Corporate Compliance, Fundamental Administrative Services, LLC  
- David Kidder, CEO, Carolina Adventist Retirement Systems

Introduction

My name is Dianne De La Mare, and I serve as AHCA’s Vice President of Regulatory Affairs. You are participating in “How to Design and Implement a Corporate Compliance Program—Designating a Compliance Officer and Compliance Committee. This session today will focus on the potential roles and responsibilities of the compliance officer and the compliance committee. I want to direct your attention to the new materials on the AHCA/NCAL website corresponding with today’s webinar. You can access that information by logging into the AHCA/NCAL website; double clicking on “Facility Operations;” and then double clicking on “Compliance Programs.”

For those of you who joined us for the October Webinar where we discussed the basic structure of designing a compliance program; welcome back! For those who are just joining us for the first time today; please understand that you have all the tools you need to move forward with us from this point onward. If you go to the AHCA website—you will find links to all the materials produced to date; and you can even download the archived October webinar. As we move through 2009, with monthly “how to webinars” on designing and implementing a compliance program, we will consistently update the materials and archive past webinars. So those will always be available for you whenever you need the information.

I now want to introduce our speakers today, Ken Burgess is an attorney from Poyner & Spruill, who is developing the electronic compliance guidance on AHCA’s website, and who will start us off today with a short review before moving on to new information.

Following his short presentation, we had hoped to have Cheri Battee from Fundamental Administrative Services share with us how she designates a compliance officer and committee in her large company, while David Kidder, a two building chain owner, tells us how he designates a compliance officer in a smaller setting. Unfortunately, Cheri is ill; but she has sent me her ideas and thoughts, and I’ll read those when the time comes. With that said, Ken I’m going to turn the time over to you.
Basics on Compliance Officer and Compliance Committees

Ken: Thank you, Dianne. For those of you who were with us in October, welcome back! For those of you who are with us for the first time, welcome. In October, in our first session, we talked about comparing a corporate compliance program to building a house, which may seem a little silly, but the purpose is twofold: 1) We want to give you a way to think about a compliance program that isn’t overwhelming—so we’ve boiled it down to comparing the process to building a house; and 2) want to give you a simple comparative tool to use as you teach about compliance programs in your building.

So, we are likening building a compliance program to building a house. And we will follow that analogy throughout the series on compliance programs. If you think about houses, they have two broad components: the external and internal structure. A compliance program is similar. It is made up of a compliance officer, compliance committee and certain processes for auditing and reporting violations. All these things are the mechanical, physical structure of the house. The internal piece, like the furniture of the house, is the laws that all of us in the profession are expected to follow.

In October, we addressed what is a compliance program? We talked about the seven effective elements of a program; and we talked about the corporate philosophy statement, which is a written commitment by company officers from top to bottom to have a living, breathing corporate compliance program. We talked about the role of Board of Directors or Owner. We talked about the mechanical structure.

Today, we want to continue that discussion, and talk about the external parts which are committee officers and the compliance committees. If we continue with our house analogy, there is an architect and there is the general contractor implementing the blueprint of the architect from start to finish. The compliance officer has both of these functions. In the 2000 OIG voluntary guidance, the OIG laid out information on their expectations for the compliance officer and the compliance committee. The OIG supplement to that original guidance, did not change the OIG’s expectation in 2008. What changed are the risk areas, which are the furniture, the laws we must follow.

What is the role of the compliance officer?

First, he/she must set up the compliance program. Not only does the compliance officer have to have the written program in place; but also the philosophy statement; the training for the board and the employees; the reporting systems for employees to report violation—basically, he/she has the task of setting up the program from stem to stern. The compliance officer’s second major function is overseeing the compliance committee; having an on-going role in ensuring the consistent operation of the program. The compliance officer also has the job to
recommend improvements when needed. There are always new services and new personnel, and the compliance officer must ensure that the program lives, breathes and changes whenever the laws or the provider’s operations change. Another critical function of the compliance officer is the task of regularly reporting to the Board of Directors and owners, and taking the role of educating the Board of Directors so that they understand what they are hearing and understanding as it relates to compliance reports. The compliance officer also has a role in organizing and overseeing (if not conducting) investigations and audits (either routine or suspected violations); overseeing the reporting systems; developing mechanisms for employees and contractors to express concerns or report suspected violations; and lastly, overseeing the reports of potential violations. Those are some of the key roles and elements of a compliance officer.

Characteristics of the compliance officer

One of the characteristics a compliance officer should have is the sufficient authority to implement/enforce the program. Another key characteristic the OIG has stressed over the past couple of years is the compliance officer must have direct access to the board of directors, owners, and key management; so that he/she has all the information and authority needed to keep the program current and to respond to violations as they occur. The compliance officer also must have access to key documents including resident and quality reports; such as, employee surveys, Quality Indicator Survey (QIS) results, and billing and marketing records. The compliance officer also needs sufficient staff and resources to carry out the program. The compliance officer acting alone cannot make a good compliance program. The compliance officer must have sufficient staffing, funding and other resources to run the program. A key role is educating the board of directors/owners so that they remain informed of key issues and potential violations and are a part of determining the fixes.
Who should be the compliance officer?

Each provider makes this decision on their own. The OIG has recommended historically that the Chief Financial Officer (CFO) or someone in a similar finance position refrain from being the compliance officer because fraud violations have arisen in connection with billing and contracts. Each provider must decide who is the best compliance officer for their company based on the size, complexity, and sophistication of the provider.

The web materials we provided for you this month give sample language for describing the compliance officer’s role, which can be the basis for that job description. We also included a checklist of initial tasks and on-going responsibilities that you can use in setting up this position. The fulfillment of these tasks could be part of the job evaluation of the compliance officer. The compliance officer can and should delegate and oversee others.

The compliance committee works at the direction of the compliance officer in whatever capacity he/she needs and directs. Again, the OIG guidance on compliance committees has not changed since the original 2000 guidance. The membership of the compliance committee may change based on the specific issues being discussed; but a strong core membership, including individuals with expertise in clinical, finance, legal —or access to legal expertise on any given day or month—is essential. The compliance committee also must have a connection with the quality assurance committee, but what exactly this connection is, each provider must decide for themselves. The compliance committee members assist the compliance officer with analyzing risk areas, employee education, assessing policies and procedures, employee codes of conduct, monitoring internal controls and identifying areas that need improvement in the compliance program itself.

In the next part of the program Dianne De La Mare will be speaking on behalf of Cheri Battee; and David Kidder will talk about how the compliance officer and committee responsibilities are set up in his company.

Dianne: I will be substituting for Cheri Battee who is sick today. Cheri is Vice President of a multi-facility chain and I’ll be using her notes as an example of how compliance officers and committees are utilized in a large long term care (LTC) facility. David Kidder will talk about his organization in a small, two chain facility. David why don’t you start by talking a little about your company and your compliance officer.
Panel questions:

Question: **Who is the corporate compliance officer in your company or facility?**

David: My organization has two skilled nursing facilities (SNFs). One facility with 118 beds and the other facility with 146 beds. I am a licensed administrator with a Masters in Organizational Business. I’ve been in the LTC setting, within the same organization for 23 years. Because our company is small, I am the corporate compliance officer. Our organization has a kind of internal philosophy to lead by example, and to set the tone from the top of the organization, I was appointed compliance officer. I also do all the staff compliance training. Dianne?

Dianne: Thanks David; that makes sense in a small company. Something that the OIG says over and over in its compliance guidance is that you have to have a commitment from your leadership. It has to come from the top in order for other staff to be convinced that compliance is important. Cheri is Sr. V.P. of Compliance. Her background is a nursing degree with a Masters in Business, and she has been involved in compliance issues and the LTC business since 1986. When she first joined the medical review staff at a Medicare Fiscal Intermediary (FI) office; she managed the medical review, provider relations and the fraud unit office. She worked closely with the Inspector General (IG) on their investigations. She joined her current company in 1994, and there she was asked to organize the compliance department. She is in senior management and serves as the compliance officer for the multi-facility company for all lines of the business. She also communicates often—informally and formally with administrators in the facility. Cheri considers the facility administrator as the compliance officer in each of their respective facilities. So in many ways, the “set up” of the compliance officer is similar in the large company as it is in the small company.

Question: **What education, training and experience do you look for in a Compliance officer?**

Dianne: When you look at the training, education and experience that is necessary for a compliance officer to be effective; Cheri believes the most important qualification is that the compliance officer be ethical, trustworthy and responsive. I think it is interesting Cheri believes this to be the most critical characteristic of a compliance officer. The compliance officer’s background can be clinical, legal or financial. The compliance officer must have a good understanding of the LTC business and regulations. Cheri also believes that balance is very important. Her background is in nursing and she has spent time working with the Medicare system; which is helpful in understanding billing and coverage. She also is cognizant of her professional colleagues who have other key skills; and thus she doesn’t feel pressured to know all the answers. Even though Cheri serves as the compliance officer for the company; she has other staff members that help her
along the way. David tell us a little about what training, education and experience you think is important in a compliance officer.

David: I want to emphasize what you just heard. In our smaller setting, it is extremely important to be knowledgeable of the LTC industry. Know the rules and regulations in every facet of the operation. In my opinion, much of compliance starts with nursing—to have a strong clinical background is extremely important to us. As compliance officer, I want the administrator to know that it is important for him/her to decide and understand what is beyond their level of expertise and determine if/what other individuals should be pulled into the discussion. As far as education, I want a compliance officer with some clinical background and very in-depth knowledge of the LTC industry and its rules/ regulations.

Question: Do compliance officers need to be senior managers?

David: I believe that the compliance officer should be part of the senior management because he/she needs to set an example, and show other staff that the compliance program in the company is important. If the compliance officer is in senior management, he/she also will have interaction with staff in training and with the Board. It is important that the entire staff understands that the compliance program is important to the company. Thus, the compliance officer has to be someone that has a direct connection to the company leadership, so that when a problem arises the compliance officer can go to the relevant company leader quickly, and give reports periodically. Anything less than senior management is too confusing and results in poor communication with these matters.

Dianne: Cheri agrees with David. Cheri is a senior manager, and she believes the compliance officer needs to have sufficient authority to enforce certain decisions. Clearly, some decisions that a compliance officer makes are not popular; and having the compliance officer be part of senior management often results in the staff having enough respect for that position to follow through. Cheri believes that the compliance program needs support from the top; so the organization’s compliance program is taken seriously. It is not a game, and a company should not just set up a compliance program because the government tells you to set it up. It really has a function, and that function is to ensure that compliance with all the applicable regulations is the basis for improving quality in your facility. Cheri is a member of the Health Care Compliance Association (HCCA), and she relied on an HCCA 2008 survey, which shows that 67 percent of compliance officers are members of senior management.

Question: What’s a regular day like for the compliance officer?

Dianne: According to the HCCA survey, 74 percent of compliance officers hold more than one position in the company—so it’s difficult to describe what a regular day is
like for a compliance officer. Not only are qualified individuals acting as compliance officers, but they also have many other roles and responsibilities. Cheri has shared a list of what she does during the week as follows: reviews and follows up on issues reported to the compliance officer; looks at specific risk areas for potential allegations of fraud/abuse in the building so an appropriate work plan can be developed for the next FY; addresses questions and issues raised by corporate and field staff; studies/understands and teaches staff the Federal and State rules and regulations; and interacts with other compliance officers/groups. Cheri routinely reviews medical director and therapist contracts; investigates problems within buildings in her company; reviews training reports; and regularly looks at the OIG’s list of exclusion and other exclusionary lists to ensure that her company is not working with individuals/companies that have been excluded from the Medicare/Medicaid programs.

David: I don’t go through the building with the “eyes” of a compliance officer in my average day. Like an administrator, I usually walk through the building to see if it is running correctly. I typically do all the tasks that Cheri does; but not as often, since we are a smaller company. I am responsible to follow-up with any of the reporting issues for the hotline. Part of my daily routine also includes staff education. I educate and train staff on a daily basis— with a smaller company I have time, and have to do that.

Dianne: For those of you on the phone with smaller companies, it is important to remember that there are some simple things you can do to start a compliance program. It is important to keep it simple and straightforward.

Question: **What are the challenges that the compliance officer faces on a daily basis? And, how do you handle those challenges?**

David: The initial challenge for me is the educational piece because it is something new. I have a daily challenge to encourage our folks in both of our buildings to report instances. We have to make sure that the level of confidence between staff and the compliance officer is open. It is a matter of daily education, and if I do the job right, then I won’t have to worry about compliance. The right reasons include incorporating ethics and integrity into our daily operations. The challenge is to adhere to the rules that are a part of our industry, and ensure that the staff feel comfortable reporting what they perceive as something wrong.

Dianne: Good point. Staff may or many not know the law, and hence can’t comply. Having an appropriate forum to ask questions and learn is important. Cheri believes her biggest challenge is keeping the continuity of the program despite the turnover of staff; i.e., informing new staff that there is a compliance program and a code conduct, etc... She also said that keeping the program new and fresh and doing more than just what the Federal regulators expect is a challenge. Providing
staff with the background information, which is the basis of a quality program, and adding new processes and procedures is a consistent challenge. Another huge challenge is developing an effective training program and communicating the basics of compliance concepts in an interesting and user friendly way. I also is difficult to allow and fit the time in for the training program.

David: It is a futile act to implement a corporate compliance program unless your staff understands the rules/regulations of compliance. Ensure that staff is comfortable with, and understands the significant rules and regulations, as well as the intent of the rules, so proper compliance can occur.

Dianne: I think that that is a good point David, and another important point is that sometimes the actual word corporate compliance officer is a real turnoff with staff and leadership. You can be creative. Call it the foundational quality officer or whatever resonates with your staff.

Panel Questions: Compliance Committee

Question: Who is on the Compliance Committee?

Dianne: When AHCA/NCAL did a survey and we asked them who their compliance committee members were; we found that the compliance officer is often someone from legal, clinical, risk assessment or a compliance analyst to name a few.

David: We applied the “KIS” theory. Keep it simple. I chair the committee. We have a CFO, Director of Human Resources, risk manager who is a nurse and an attorney with whom we consult from time to time. When we formed this committee, I wanted to form a committee that covered the full gamut of the operational issues. Realizing none of us had the full expertise in every area, we kept our committee small, so we could quickly/efficiently go to someone that would know the answer. We kept it small and functional; not that that might change in the future if we saw a need for a bigger group.

Dianne: I like the KIS principle. For those of you on the phone, remember you are already improving quality in your building, so you’re already doing something that would fall under the facility compliance program. Cheri is the Chair of a small group that includes the Sr. V.P. of Clinical Services, the Division President, V.P. of Rehabilitation, General Counsel and the company Privacy and Security officer.

Question: How does a typical meeting run?

Dianne: Until recently, Cheri’s company operated under a corporate integrity agreement. Now, they look with regularity, at compliance and quality of care issues. The compliance committee does not address issues in detail. She wants the compliance group to look at issues globally. She wants the compliance committee to drive the program/process, and make the important decisions. She also tries to make sure,
as the compliance officer, that the committee doesn’t spend the meeting providing updates on what she and the department have done. In her last meeting, her agenda consisted of findings and recommendations on audits in her building, fiscal intermediary reviews, recent government initiatives, hotline survey results and resolutions of any issues surfacing in the exit interview process.

**David:** We meet quarterly or as necessary and the meetings are not as technical. We address issues coming from the hotline; and with our committee, we do go into detail. We also meet with the Quality Assurance Committee and we look at those findings/results. We are setting up a therapy department and a finance office to ensure that the residents are getting the care they need. Although our structure for a compliance committee is more informal, we make sure that we are complying with the relevant regulations/laws.

**Question:** Does the Compliance Committee overlap with the Quality Assurance Committee?

**Dianne:** There is a little overlap with the Quality Assurance Committee and the Compliance Committee in Cheri’s company; but they have different roles/responsibilities. It is required by law to have a Quality Assurance Committee; and there are legal protections as to the information circulating in those meetings. Cheri serves on both committees, and acts as the liaison between the two committees. The Quality Assurance Committee discusses very specific quality issues at the facility location. The compliance committee originally focused more on fraud and abuse; but that has changed dramatically and now it looks more globally at quality of care. Ken do you want to talk a little about supplemental guidance and the emphasis the OIG has placed on quality of care.

**Ken:** The big change in the 2008 OIG Supplemental Guidance is their focus on quality of care. The 2008 guidance gives specific and broad attention to quality of care issues.

**Question:** What challenges have you had within the Compliance Committee, and How do you handle those challenges?

**Dianne:** Cheri’s biggest challenge is getting the right mix of people to attend and participate in the compliance committee meetings, and to let them know that they are empowered to make important decisions.

**David:** The education component is the most challenging. Educating the staff and creating a level of comfort for them to accurately report information is key. How do we handle it? Annual in-service education and educating from moment-to-moment. Another challenge is educating our Board of Directors. Being involved in a compliance program is a new activity for most of the Board.
Dianne: That concludes our webinar today. Thank you for your participation. Please continue to learn and grow with us and we look forward to your participation next month. Ken and David, thank you.