

Montana Primary Care Association: Role of the Board in Setting Vision/Strategy and Compliance vs. Operations

Jacqueline C. Leifer, Esq.
Senior Partner

November 7, 2018

DISCLAIMER

This training has been prepared by the attorneys of Feldesman Tucker Leifer Fidell LLP. The materials are being issued with the understanding that the authors are not engaged in rendering legal or other professional services. **If legal advice or other expert assistance is required, the services of a competent professional should be sought.**

AGENDA

I. Strategic Planning

II. Compliance



I. Strategic Planning

STRATEGIC PLANNING: WHAT ARE THE REQUIREMENTS?

- Engage in long-term strategic planning (at least once every 3 years), including update of mission, goals and plans as necessary and appropriate and at a minimum addresses financial management and capital expenditure needs
 - Compliance Manual codifies the 3-year long-range planning requirement (but the Compliance Manual provides the Board with discretion to determine the format)
- Measure and evaluate progress in meeting annual and long-term financial and programmatic goals
- Evaluate health center activities: service utilization patterns; productivity; patient satisfaction; achievement of project objectives; patient grievances

HRSA SITE VISIT TEAM METHODOLOGY

- Reviews the health center's articles of incorporation, bylaws, and other relevant documents.
- Interviews of the Project Director/CEO and the Board regarding how the Board carries out these functions.

WHAT ARE SOME COMPLIANCE TIPS?

- Make sure that you can prove that the board properly addresses strategic planning and related requirements, outlined in **Chapter 19 of the Health Center Program Compliance Manual** – remember, there is no partial compliance.
- Documentation should include the health center's articles and bylaws, board and committee meeting agendas and minutes, resolutions, board packet attachments (including management reports and presentations), work plans, strategic planning meeting notes, and the strategic plan.
- Be prepared to document and discuss any planned follow-up actions.

CORE ELEMENTS OF STRATEGIC PLANNING EFFORTS

- Define/update health center mission and vision, in the context of a comprehensive environmental scan
- Set priorities and goals that support and further the mission
- Allocate resources accordingly

UPDATE HEALTH CENTER GOALS

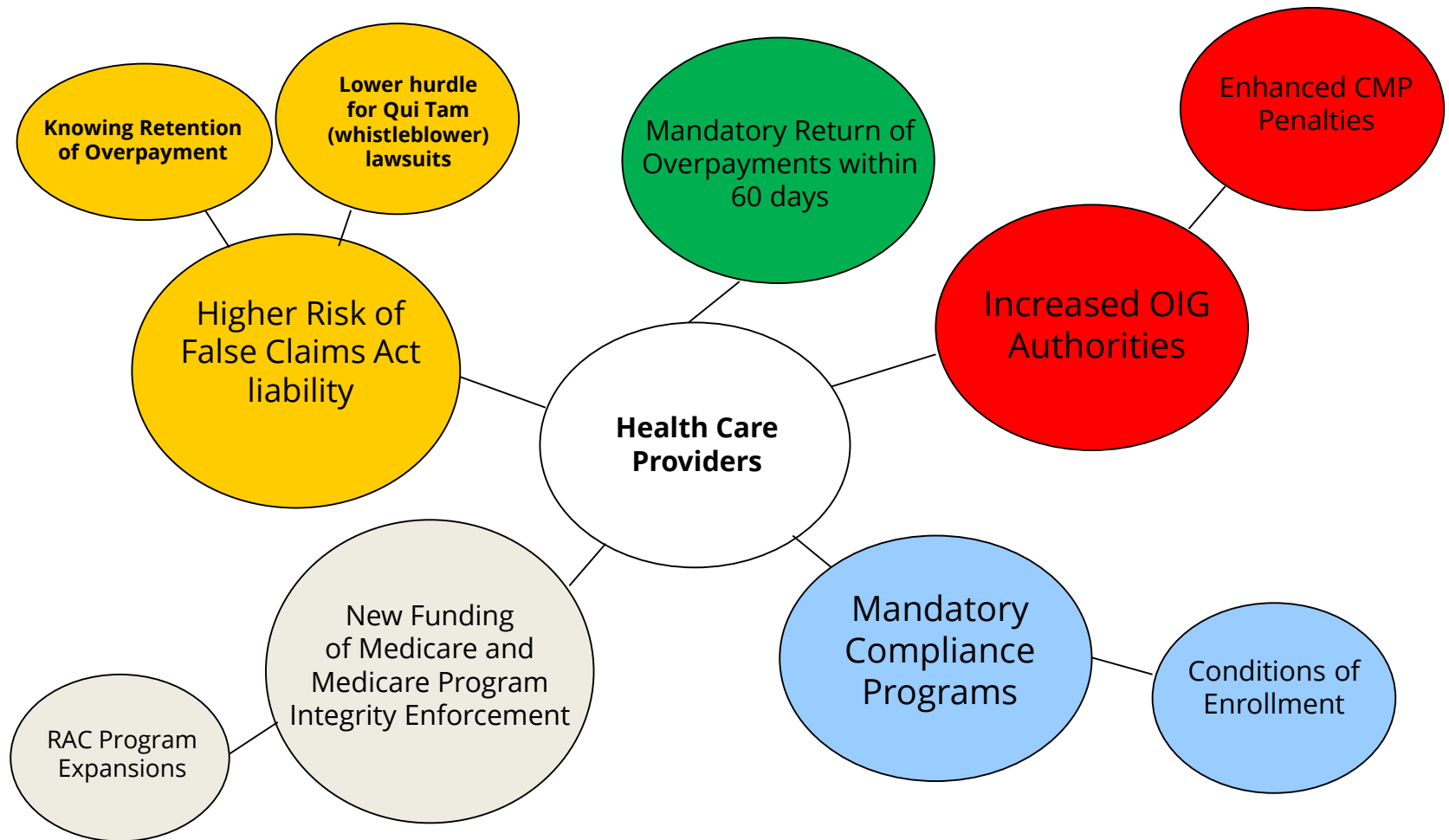
- Set direction, priorities, goals and objectives to support and further the mission:
 - Measure and evaluate goals and objectives
 - Conduct ongoing review of health center mission and bylaws
 - Evaluate patient satisfaction
 - Monitor health center performance
- Ensure that priorities and goals are beneficial to the community being served:
 - What are the prominent issues confronting the community or special populations served?
 - Consider holding stakeholder meetings, focus groups, community forums

ANNUAL PLANNING FOR THE HEALTH CENTER

- Meaningful involvement of the Board in annual needs assessment and oversight of resulting action plans
- Evaluation of patient utilization and satisfaction
- Consider holding stakeholder meetings, focus groups, community forums

II. Compliance

THE COMPLIANCE LANDSCAPE



ANTI-FRAUD ENFORCEMENT

- Federal health care fraud prevention and enforcement efforts recovered \$2.6 billion in taxpayer money in FY 2017
- In FY 2017, OIG investigations resulted in 788 criminal actions, 818 civil actions and 3,244 exclusions from federal health care programs
- Government recovered \$4.20 for every \$1.00 spent on fraud investigation and enforcement (2015-2017)

- Source: Health Care Fraud and Abuse Control Program Annual Report for Fiscal Year 2017 (April 2018)

HIPAA ENFORCEMENT

- Enforcement of HIPAA Privacy and Security Rules
 - Recent headlines from the HHS Office for Civil Rights include:
 - \$4.3 million judgement: Theft of an **unencrypted laptop** and **two unencrypted USBs** leads to breach affecting over 30,000 individuals
 - \$100,000 settlement: Record disposal company leaves protected health information of 2,150 individuals **unsecured and outside** its facility
 - \$3.5 million settlement: Covered entity reported **five separate breaches in four months**, affecting 521 individuals
 - \$2.4 million settlement: Covered entity released protected health information of **one patient** in a press release, to advocacy groups, state legislators and on website
 - \$400,000 settlement: Phishing incident affected protected health information of over 3,200 **health center** patients

HEALTH CENTER BOARD'S FIDUCIARY DUTIES

- Section 330 implementing regulations state that the Board of Directors has specific responsibility for “assuring that the center is operated in compliance with applicable Federal, State and local laws and regulations.”
- *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959 (Del. Ch. 1996):
 - Delaware Court held that a Board’s failure to adopt a Compliance Program may constitute a breach of fiduciary duties

42 C.F.R. § 51c.304(d)(3)(v)

7 ELEMENTS OF EFFECTIVE COMPLIANCE PROGRAMS (PER FEDERAL GUIDELINES)

1. Designate a compliance officer/contact
2. Conduct internal monitoring and audits
3. Develop written standards and policies to implement the Compliance Program and govern health center operations
4. Conduct culturally and linguistically competent training and education programs
5. Develop effective, clear, open lines of communication between compliance and health center personnel - open door policy and policy prohibiting retaliation
6. Investigate detected problems and develop corrective action
7. Publicize and enforce disciplinary standards

BOARD'S ROLE IN CORPORATE COMPLIANCE

- The Board is responsible for establishing, overseeing, and periodically evaluating corporate compliance program
- Specific tasks:
 - Pass a resolution reflecting the board's ongoing commitment to ensuring the health center operates in a legally compliant and ethical manner; approve the key policies that define the compliance program's framework; update annually
 - Ensure funds budgeted for the compliance program are sufficient and appropriate, considering the health center's size, complexity, and compliance history
 - Review the annual compliance work plan and, during the year, monitor progress
 - Receive regular reports from the CEO and the Compliance Officer about compliance program activities
 - Receive information and reports from the Compliance Officer about investigations of non-compliance (as appropriate) – in executive session!
 - Periodically evaluate the performance and effectiveness of the compliance program and update, as appropriate

OIG COMPLIANCE GUIDANCE FOR HEALTH CARE BOARDS

- Some resources to assist health care Boards in fulfilling corporate compliance duties
 - www.oig.hhs.gov/compliance/compliance-guidance/compliance-resource-material.asp
 - *The Health Care Director's Compliance Duties: A Continued Focus of Attention and Enforcement*
 - *Handout: A Toolkit for Health Care Boards*
 - *Practical Guidance for Health Care Governing Boards on Compliance Oversight*

QUESTIONS?

Jacqueline C. Leifer, Esq.

Senior Partner

Feldesman Tucker Leifer Fidell LLP

1129 20th Street, NW, Suite 400

Washington, DC

(202) 466-8960

jleifer@FTLF.com

www.FTLF.com

learning.ftlf.com