



Bold Compliance Needed Under PPACA

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The Patient Protection and Affordable Care Act, as amended ("PPACA" or "the Act"), ushers in a new, much larger dimension of meaning for terms such as "Compliance", "Compliance Plan", "Compliance Program", and the like. The Act elaborately broadens both reporting and performance requirements for physicians. Coordinating compliance as new elements/provisions of the Act become effective will be a major task.

Physicians who have compliance plans now will have to review them for sufficiency. In many cases, although cautioned against ghost plans, the Act will require far more fleshed out and operative compliance plans. Careful and complete notes and minutes will need to be taken supporting compliance activity.

The Act broadens the array of relational statutes and other tools that require connectional observance.

The breadth of the Act gives us different kinds of compliance in a multiplicity of areas. Compliance may involve acts of commission and/or omission. "Good faith compliance" or "substantial compliance" may well be consistent with the design of the Act that some latitude be given to physicians/providers who make in depth attempts to comply with the law. For insurers and employers, a "good faith compliance" standard is already mandated by the Act, and gives some relief to them. But non-compliance is not excused. The new Act will have to blend with COBRA, the Internal Revenue Code, the Department of Labor/Fair Labor Standards Act, and ERISA, among others.

With the passage of the Act, as amended, Congress for the first time has provided that the Health and Human Services ("HHS") Secretary has the authority to define providers, suppliers and physicians who must adopt a compliance plan by 2014. Some commentators already see the Act as requiring that "all" providers will have to have compliance plans.

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Nursing homes are already required to have compliance plans under the Act. In addition, the State of New York has thresholds for mandatory plans.

Nursing home compliance plans will be required to contain the following elements, which may well be required of all mandated compliance plans: (1) establish compliance standards and procedures; (2) a senior-level compliance officer with sufficient resources and authority; (3) due care to limit discretionary authority to wrongdoers; (4) training and communications; (5) a reporting system for employees as well as monitoring and auditing systems; (6) consistent enforcement, including employee discipline; (7) reasonable responses to detect misconduct, including program modifications to prevent similar offenses; and (8) periodic reassessment of the compliance program.

The Act signals an important shift to greater self-policing and physicians will carry an additional responsibility to make certain that their actions or omissions to act are consistent with the law.

For example, detection and reporting of overpayments will require repayment to be made within 60 days, and must be accomplished to avoid violation of the False Claims Act.

The references throughout the Act to the many reporting requirements by physicians/providers signal that great care must be exercised in avoiding compliance omissions.

Compliance will also relate to the more esoteric or substantive aspects of the Act. Proper appreciation and adherence to quality and other measures, which will apply to physician/provider reimbursement for services, are going to be important. These, as well as other measures, will become refined as will the auditing tools employed in examining provider performance. Again, compliance plans can become the physicians' friend in demonstrating and documenting the providers' adherence to requirements and policies in place.

A potential slippery slope into civil and criminal infractions may finally force the physician to become involved more deftly with the administrative side of his/her practice. Delegation without adequate physician supervision and review becomes a much more dangerous course of action.

So we see, new circumstances beseech physicians/providers to become compliant or risk serious adverse consequences.