

ALICE G. GOSFIELD

& ASSOCIATES, P.C.



**MEDICAL PRACTICE
FRAUD AND ABUSE COMPLIANCE
PLAN DEVELOPMENT AND MAINTENANCE
PROTOCOL**

by

Alice G. Gosfield and Associates, P.C.
2309 Delancey Place
Philadelphia, PA 19103
(215) 735-2384

E-Mail: Agosfield@gosfield.com, dshay@gosfield.com
Website: www.gosfield.com

The information here is presented as a service to readers. It is not intended as legal advice. We have attempted to provide information which is up to date, but rules often change. No one should rely on this information alone and should obtain current, informed legal guidance with regard to the issues contained herein. We make no representations, nor guarantees regarding the contents of the information contained herein.

Copyright 2017 Alice G. Gosfield and Associates, PC, all rights reserved

TABLE OF CONTENTS

| | | |
|-----------|---|-----------|
| 1. | Introduction..... | 1 |
| 2. | Principles and Practical Tips | 1 |
| 2.1 | Principles | 1 |
| 2.2 | Practical Tips..... | 2 |
| 3. | Developing Priorities | 3 |
| 3.1 | The Scope | 4 |
| 3.2 | Getting There..... | 4 |
| 3.3 | The Timeline | 5 |
| 3.4 | Assigning Responsibility with Specificity | 5 |
| 4. | A Compliance Framework..... | 5 |
| 4.1 | Implementation of Written Policies and Standards of Conduct | 5 |
| 4.2 | Designation of a Compliance Officer or Contact | 7 |
| 4.3 | Conducting Comprehensive Training and Education on Practice Ethics and Policies and Procedures..... | 9 |
| 4.4 | Conducting Internal Monitoring and Auditing Focused on High-Risk Billing and Coding Issues Through Performance of Periodic Audits..... | 11 |
| 4.5 | Developing Accessible Lines of Communication Such as Discussions at Staff Meetings Regarding Fraudulent or Erroneous Conduct Issues and Bulletin Boards to keep Practice Employees Updated..... | 13 |
| 4.6 | Enforcing Disciplinary Standards by Making Clear or Ensuring Employees are Aware that Compliance is Treated Seriously..... | 14 |
| 4.7 | Responding Appropriately to Detected Violations Through Investigation Of Allegations and the Disclosure of Incidents to Appropriate Government Entities..... | 15 |
| 4.8 | Responding to Compliance and Fraud and Abuse Related Inquiries..... | 16 |
| 4.9 | Relationships with Vendors | 17 |
| 5. | Maintaining Enrollment Data..... | 17 |
| 5.1 | How to Submit and By Whom..... | 17 |
| 5.2 | When to Submit..... | 18 |
| 5.3 | What to Submit | 18 |
| 5.4 | Enrollment Officer Duties and Expertise | 18 |
| 6. | Responding to Audit Requests | 19 |
| 6.1 | Who Audits | 19 |
| 6.2 | Before Records are Sent | 19 |
| 7. | Voluntary Repayments..... | 20 |
| 7.1 | Examples of Overpayments | 20 |
| 7.2 | Identifying an Overpayment | 21 |
| 7.3 | Examples of Credible Information | 21 |
| 7.4 | Quantifying The Amount of the Overpayment..... | 22 |
| 7.5 | How Far to Look Back..... | 22 |
| 7.6 | Reporting and Repaying | 22 |
| 8. | Specific Issues | 23 |
| 8.1 | Antitrust | 23 |
| 8.2 | Professional Courtesy..... | 24 |
| 8.3 | Billing and Coding Procedures..... | 25 |

| | | |
|----------------------------------|---|-----------|
| 8.4 | Reasonable and Necessary Services..... | 25 |
| 8.5 | Documentation Including Compliance Risks in EHRs..... | 26 |
| 8.6 | Kickbacks Inducements and Self Referrals | 27 |
| 8.7 | Special Concerns With Regard to Pharmaceutical and Device Manufacturers..... | 28 |
| 8.8 | Retention of Compliance Records..... | 29 |
| 8.9 | Local Coverage Determinations (LCDs) | 29 |
| 8.10 | Advanced-Beneficiary Notices (ABNs) | 30 |
| 8.11 | Physician Certifications of Medical Necessity and Treatment Plans..... | 30 |
| 8.12 | EMTLA (anti-dumping) | 31 |
| 8.13 | Relationship with Third Party Billing Companies | 31 |
| 8.14 | Gainsharing | 32 |
| 8.15 | Rental of Space in Physician Offices by Persons or Entities to Which Physicians Refer..... | 32 |
| 8.16 | Unlawful Advertising | 33 |
| 8.17 | Stark Compliant Compensation | 33 |
| 8.18 | Supervision | 34 |
| 8.19 | Quality and Reporting Fraud..... | 34 |
| 9. | Compliance Considerations for Physician Employment Agreements | 38 |
| 9.1 | Employee Obligations..... | 38 |
| 9.2 | Reassignment | 40 |
| 9.3 | Overpayments | 40 |
| 9.4 | Representations and Warranties | 41 |
| 9.5 | Compensation Incentives | 42 |
| 9.6 | Change of Law | 42 |
| 9.7 | Employee Expectations..... | 43 |
| 10. | Measuring Compliance Program Effectiveness..... | 44 |
| 10.1 | Themes..... | 45 |
| 10.2 | Fundamental Repetitive Principles | 46 |
| 10.3 | The Measures and How to Assess Them | 48 |
| 11. | Conclusion | 57 |
| Exhibit A-Resources | | 58 |
| A. | Compliance Related Websites | 58 |
| B. | Books | 58 |
| C. | Articles | 59 |
| D. | Teleconferences..... | 6 |