

Ethics and Corporate Compliance

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About This Course

Every day at work you make important decisions that impact the people you care for and the organization you work for. Establishing an effective corporate compliance program helps healthcare organizations prevent, detect, and correct unlawful and unethical behavior. This course discusses the laws and behaviors related to ethics. It also discusses your responsibilities in preventing and identifying unlawful and unethical behavior. By recognizing fraudulent and unethical conduct, you will be able to make the best decisions for yourself, the people you care for, and your organization.

The goal of this course is to familiarize general staff in healthcare settings with the most common types of fraudulent and improper conduct.

Learning Objectives

After taking this course, you should be able to:

- Identify common high-risk areas for fraudulent conduct.
- Recall at least three types of fraudulent or other improper conduct.

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Section 2: Compliance Programs

What Is a Compliance Program?

Compliance means following the law or rules, while ethics means doing the right thing even without rules or laws. Corporate compliance programs help healthcare organizations prevent, detect, and correct unlawful and unethical conduct. For your organization's compliance program to be effective, you must be able to recognize unlawful and unethical conduct.

A compliance program should have clearly written policies and procedures that communicate a commitment to ethical conduct. The main goal of a compliance program is to improve the quality of care provided. Other goals of a compliance program include:

- Support employees to identify and prevent unethical or unlawful conduct.
- Provide a system to report potential problems.
- Outline the conduct investigation process.
- Determine how and when to take corrective action.
- Reduce exposure to civil damages, penalties, and criminal sanctions.

Elements of a Compliance Program

The Office of Inspector General (OIG) investigates healthcare fraud. They provide guidance and recommendations to healthcare organizations on the implementation of effective compliance programs. Specifically, the OIG has identified seven basic elements of a compliance program to ensure the program is effective (OIG, n.d.):

1. Develop policies and procedures that incorporate the standards of conduct.
2. Appoint a compliance officer and committee.
3. Establish open lines of communication.
4. Conduct effective training and education.
5. Create internal auditing and monitoring systems.
6. Enforce standards through disciplinary guidelines.
7. Respond to detected offenses by developing a plan of correction.

The False Claims Act

One measure that helps fight healthcare fraud is the False Claims Act. The False Claims Act, also known as the Lincoln Law, prohibits a person from defrauding the federal government. For example, an offense of this federal law would be billing Medicare for services that were not provided. Under the False Claims Act, fraud includes (Department of Justice, 2011):

- Knowingly submitting or causing the submission of false claims for payment by the government.
- Knowingly making, using, or causing another to make a false record or statement relevant to a false claim.

Any person or organization who violates the False Claims Act can be held responsible and be subject to a civil monetary penalty. Additionally, they may face criminal consequences if the false claim was intentionally committed. Any organization or person found liable for submitting or causing the submission of false claims can be excluded from participating in Medicare, Medicaid, and other government programs.

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Deficit Reduction Act

The Deficit Reduction Act of 2005 includes provisions to eliminate fraud, waste, and abuse in Medicaid and an amendment to the Social Security Act requiring all organizations receiving over \$5 million in annual Medicaid payments to supply detailed information to employees (Social Security Act, 2012). The written policies must include information regarding:

- The False Claim Act.
- The administrative solutions for false claims.
- State laws pertaining to civil or criminal penalties for false claims.
- Whistleblower protection under these federal and state laws.
- The roles of these laws in preventing and detecting fraud, waste, and abuse.

The Deficit Reduction Act also offers financial incentives for states to enact their own false claims act that mirror the federal act.

Fraud, Waste, and Abuse

One basic element of an effective compliance program is implementing written policies and procedures. These policies summarize the basic legal and ethical principles under which your organization operates. It is important for you to be familiar with your compliance policies so that you know what conduct your organization prohibits.

Fraud, waste, and abuse are three types of improper conduct. There are similarities between these three types of improper conduct with the main difference between them being intention.

Regardless of the intention or type of improper conduct, the costs are high. The National Health Care Anti-Fraud Association (2021) estimates the annual financial losses from healthcare fraud are in the tens of billions of dollars.

Fraud

Fraud is an intentional deception or misrepresentation made by a person with the knowledge that the deception or misrepresentation could result in benefits. It is a deliberate act. For example, it is fraudulent for someone to bill an insurance company for a higher level of care than provided.

Fraud also includes violations of the False Claims Act. In 2020, fraud investigations conducted by the OIG resulted in (OIG, 2021):

- Approximately 578 criminal actions against individuals or entities engaging in crimes against Medicare and Medicaid.
- Nearly 800 civil actions, including false claims, civil monetary penalties, and administrative recoveries related to provider self-disclosure cases.
- Over 2,100 exclusions from participation in federal healthcare programs.

Abuse

Abuse covers practices that are inconsistent with sound fiscal, business, or medical practices, resulting in unnecessary costs, improper payment, or payment for services that do not meet professional standards of care or that are medically unnecessary.

While fraud is intentional, abuse can be intentional or unintentional. An example of intentional abuse involves a practitioner scheduling medical services that are medically unnecessary. An

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example of unintentional abuse occurs when someone accidentally or unknowingly uses the wrong billing code to bill for services or equipment.

Waste

Waste is an unintentional overutilization, underutilization, or misuse of resources. Waste also includes incurring unnecessary costs because of inefficient or ineffective practices, systems, or controls. For example, waste occurs when a provider orders excessive diagnostic tests that are not necessary, and it costs extra money and time.

Kickbacks

Kickbacks are another type of unlawful conduct that compliance programs address. The Anti-Kickback Statute (OIG, n.d.) prohibits healthcare organizations from giving or accepting:

- Kickbacks
- Bribes
- Rebates
- Any other kind of payment deal involving federal dollars

The Anti-Kickback Statute outlaws both direct and indirect compensation. This means that it forbids:

- Cash payments
- Discounted products
- Bundled services
- Compensation in kind
- Other reciprocal arrangements

It is important to know that both sides, meaning both the giving and receiving parties of an arrangement, are liable. Violations of the Anti-Kickback Statute are felonies resulting in monetary fines or prison.

Review

Which of the following is an example of waste covered in a healthcare compliance program?

- A. A provider prescribes more medications than necessary for treating a condition .
Feedback [Prescribing unnecessary medications is an example of waste. It costs individuals, insurers, and organizations money.]
- B. The employee break room does not have a recycle bin for recycling plastic water bottles.
Feedback [This is not an example of waste covered in a healthcare compliance program.]
- C. A box of donuts brought in by a family goes uneaten.
Feedback [This is not an example of waste covered in a healthcare compliance program.]
- D. Claim forms are altered to receive more payment from the Medicare program.
Feedback [This is an example of fraud, not an example of waste covered in a healthcare program.]

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Ethical Conduct

The term compliance refers to what is mandatory under the law. In other words, “Can I do this?” However, compliance programs should extend not only to lawful conduct, but also to ethical conduct.

Ethics are the standards of conduct that define what is morally right and wrong. It is based on your values as well as facts and logic. In other words, “Should I do this?” These standards will help you make the right decision in tough situations you may face when working in healthcare. You make ethical decisions daily. Here are just a few ethical situations that come up often in healthcare:

- Covering up mistakes
- Getting romantically involved with someone in your organization’s care (or their family member)
- Reporting an impaired colleague
- Breaking patient confidentiality
- Taking or dropping patients based on their insurance or ability to pay

The Golden Rule, says, “treat people like you want to be treated.” The Platinum Rule says, “treat people like they want to be treated.” When you apply this rule to ethics, you can see that it is important to not only consider your own morals and values, but also to consider the values of the people in your care.

You can use ethics to help you decide how you should act in relationships and toward other people. When you act with honesty, integrity, and compassion, the people around you will trust you and your decision-making abilities.

Ethics are important because sometimes it is not easy to decide what is right and what is wrong. Many of the choices you will have to make in your workplace will be unclear and/or complicated. The good news is that using ethics will help you make good choices in all types of situations.

What Would You Do?

Scenario #1

You walk past the room of an individual who is receiving hospice care and is nearing the end of their life. They appear to be asleep most of the time and are minimally responsive. You overhear the care providers in the room talking negatively about the person while providing care. What do you do? There are many options to consider. You could:

- Talk to those care providers outside of the room and explain that the person may be able to hear them. Remind them to treat the person with compassion and kindness.
- Talk to the charge nurse and let them know what you overheard.
- Enter the room and speak kindly to the person to model the behavior that you want the care providers to follow.

Notice that there is not necessarily a perfect choice. That is the challenge of ethics. Your decision might depend on your role in the organization and what you feel is most appropriate. For example, a nurse or therapist may respond differently than someone working in the billing office.

Scenario #2

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You notice that a coworker does not seem to be themselves today. You wonder if they are under the influence of alcohol or drugs. What do you do? You could:

- Directly ask the person if they are under the influence because they do not seem like themselves.
- Report the suspicion to your human resources department.
- Report the suspicion to your floor or facility director.
- Ask their supervisor if they have noticed anything different about the employee today.

Again, there are several options, and your decision may depend on your role in the organization. Think about other areas at work where you might have to make ethical decisions.

Unethical and Illegal

There are many areas in healthcare that can be considered both unethical and illegal. Two of the most common ethical and legal issues affecting organizations are discrimination and harassment.

Discrimination occurs when you make decisions about people based on their age, gender, race, religion, or disability.

Harassment occurs when you use intimidating behaviors toward an individual. There are many different types of harassment, including sexual, racial, verbal, and physical.

While compliance programs have a focus on fraudulent conduct, effective programs address all types of unlawful, unethical, or otherwise improper conduct.

High-Risk Areas

In healthcare organizations, some areas may be more susceptible to fraudulent and other improper conduct. They are considered to be high-risk areas. While each type of healthcare organization will have different high-risk areas, several areas are high risk for all organizations. Your company compliance program may focus on these.

Quality of Care

Healthcare quality is “the degree to which healthcare services for individuals and populations increase the likelihood of desired health outcomes and are consistent with current professional knowledge” (Centers for Medicare and Medicaid Services [CMS], 2021b).

Components of quality care include (Agency for Healthcare Research and Quality, 2020):

- Safety: Does it cause harm?
- Timeliness: Is care provided when it is needed?
- Effectiveness: Does the care result in the desired outcome?

What does this mean for you as a member of your organization? As someone who is responsible for following and upholding compliance laws and guidelines, what is your duty?

It means that if your organization knowingly provides substandard care and submits claims for payment to the government for that care, those claims are considered false claims. Effective compliance programs integrate quality of care into their compliance processes.

Focusing on specific, identified areas helps ensure that your organization is providing care and

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services according to industry and professional standards. Quality improvement is one way that organizations ensure they are delivering quality care and services. If you see substandard care, it is your responsibility to report it to your compliance officer.

Billing

Billing, or requesting payment for services, is an area that is at high risk for fraud. Fraudulent conduct related to billing includes billing for services that are (CMS, 2021 a):

- Not provided.
- Not medically necessary.
- Performed by an unqualified or unlicensed employee.
- Performed by an employee excluded from participation in federal healthcare programs.
- Already included in a global fee.
- Covered by a third-party payer.

Fraudulent billing also includes situations where someone might bill for more time than was spent on the service. For example, it would be fraudulent for a physical therapist to charge for an hour of time with a patient when they only spent 15 minutes with them.

Billing departments also must be careful to avoid filing false cost reports, not reporting overpayments, or identifying and refunding credit balances.

Documentation

In healthcare, people often advise, “If you didn’t document it, you didn’t do it.” It is important to keep in mind that documentation supports billing.

Documentation is how services, supplies, and care are accounted and billed for. This means that even if you are not directly involved in billing, it is still important to know that your actions may support your organization’s ability to submit accurate and legal claims for payment.

If you document something that you did not do, then the claim that your organization submits for care that was not provided is fraudulent. Documentation must support the claims submitted for payment.

Kickbacks

Healthcare organizations should examine their relationships with vendors, business associates, and referral sources. Kickbacks can include (CMS, 2021 a):

- Waiving deductibles or co-insurance without a good faith determination of financial need.
- Forming a referral agreement with another healthcare provider.
- Forming arrangements with vendors that allow your organization to receive non-covered items below market value.
- Accepting gifts from vendors, such as electronics, tickets to events, or vacations.

Gifts

There can be an overlap between a gift and a kickback. You must be careful when accepting or offering gifts to ensure the gift does not fall into the realm of a kickback. The rules surrounding a gift can be complex, and each healthcare organization has policies surrounding what is acceptable. Always consult with your compliance officer or compliance policies before accepting or offering a gift.

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In general, a gift must be one you did not ask for and that has a small market value. A gift is usually \$25 or less per source and per occasion. There is also a limit to the value of gifts from one source per year. Gifts, favors, services, entertainment, money, or other items of value should never be intended to influence your decisions or actions. They are considered to be kickbacks if they are designed to influence you.

HIPAA

The Health Insurance Portability and Accountability Act (HIPAA) of 1996 instated regulations protecting the privacy and security of protected health information (PHI) and electronic protected health information (ePHI). Protecting private health information is a critical part of a compliance program. It is your responsibility to know the rules around HIPAA and what information can and cannot be shared with others.

Cybersecurity

One of the biggest risks to PHI is cybersecurity issues. Cybersecurity is the protection of the computer systems your organization uses. When your computer systems are safe, ePHI is safe.

Cybersecurity is a threat for all healthcare organizations. In fact, according to the State of Ransomware in Healthcare 2020 annual report, more than one-third of healthcare organizations reported ransomware attacks (Sophos, 2021).

When an organization's security is compromised, fraud can happen. Hackers who have access to confidential information can:

- Use information to file false claims.
- Use information to obtain prescription drugs.
- Use information like Social Security numbers.

A strong compliance program outlines the guidelines you need to follow to keep company information secure, including guidelines on:

- Computer logins
- Password use
- Email security
- Phishing
- Viruses
- Ransomware/malware

Reporting Compliance Issues

Compliance is more than just making sure you are following ethical and legal practices.

Compliance also requires you to:

- Report any potential violations of your organization's compliance policies.
- Understand that a failure to report potential violations can lead to disciplinary action.
- Know who the compliance officer for your organization is and how to reach that person.
- Ask questions about potentially problematic conduct if you are unsure.
- Identify state and federal reporting hotlines you can call for additional information.

It is important to know that you are legally protected when you report a potential violation.

Retaliation

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You cannot be punished for honestly reporting a potential compliance violation. Retaliation is illegal. The Whistleblower Law protects you against being punished for reporting a violation (U. S. Department of Labor, n.d.). Retaliation or punishment can come in the form of:

- Losing your job.
- Being reassigned to a lower job/pay grade.
- Being denied benefits or rewards.
- Being forced to reduce hours or change to part-time instead of full-time.
- Receiving threats or being harassed.

Whistleblowers

A whistleblower is someone who calls attention to something that is wrong. The False Claims Act encourages people to expose fraudulent activity or poor quality of care to the federal government. It does this by allowing a person to sue a person or an organization that has violated the False Claims act on behalf of the government. In fact, you can be financially rewarded for identifying fraudulent activity. As a whistleblower, your information remains confidential.

Review

Cara is a nursing assistant at a long-term care facility. She has cared for Nadine, a resident, for the past 5 years. On Cara's birthday, Nadine gives her a \$50 gift card for a local restaurant.

What action should Cara take?

- A. Cara should ask her compliance officer if she can accept the gift.
Feedback [Accepting gifts can be considered a kickback depending on expectations and may be against company policy. It is best practice for Cara to talk with her compliance officer as they are responsible for making these types of decisions.]
- B. Cara should accept the gift and send a thank you note to Nadine.
Feedback [Accepting gifts may be against company policy.]
- C. Cara should report the gift to the charge nurse and let the nurse decide what to do.
Feedback [A charge nurse is not responsible for deciding company policy.]
- D. Cara should call the resident's family to say thank you.
Feedback [Accepting gifts may be against company policy.]

Which of the following are types of improper or fraudulent conduct?

- A. Abuse, recycling, overtime, and confidentiality
Feedback [Recycling, confidentiality, and overtime are not types of improper or fraudulent conduct.]
- B. Fraud, abuse, kickbacks, and waste
Feedback [Fraud, abuse, kickbacks, and waste are types of improper or fraudulent conduct. They can be intentional or unintentional and affect quality of care.]
- C. Fraud, overtime, confidentiality, timeliness
Feedback [Overtime, confidentiality, and timeliness are not types of improper or fraudulent conduct.]
- D. Waste, recycling, timeliness, confidentiality
Feedback [Recycling, confidentiality, and timeliness are not types of improper or fraudulent conduct.]

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Summary

Corporate compliance programs help healthcare organizations prevent, detect, and correct unlawful and unethical conduct. For your organization's compliance program to be effective, you must be able to recognize unlawful and unethical conduct. Waste, fraud, abuse, and kickbacks are types of improper conduct. Compliance programs also require you to know how to report potential compliance violations, know who to report the potential violation to, and where to find answers to questions about potentially problematic conduct. You cannot be punished for reporting a potential compliance violation.

Section 3: Conclusion

Summary

Now that you have finished reviewing the course content, you should have learned the following:

- Common high-risk areas for fraudulent conduct
- At least three types of fraudulent or other improper conduct

Course Contributor

The content for this course was revised by Annette Brownlee, BSN, RN.

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Resources

Office of Inspector General
<http://oig.hhs.gov/compliance/>

State False Claims Act
<http://www.oig.hhs.gov/fraud/state-false-claims-act-reviews/index.asp>

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Exam and BrainSparks

CE (Y)	BS (Y)	LO #	Q #	Question
	Y	1	1	Which of the following describes fraudulent conduct?
			a	Documenting care that did not occur
			b	Forgetting to clock in for your shift
			c	Receiving a gift card from a coworker
			d	Eating lunch with a person from a different floor
	Y	1	2	Lucy confides to you that a coworker has been sexually harassing her. She wonders if this is something that would fall under improper conduct in the compliance program. What should you tell her?
			a	Compliance programs only address fraudulent conduct.
			b	Compliance programs address all types of improper conduct.
			c	Compliance programs only address conduct related to patient care.
			d	Compliance programs only address gifts, kickbacks, and billing fraud.
	Y	1	3	True or False: Abuse, waste, fraud, and kickbacks are types of improper or fraudulent conduct.
			a	True
			b	False
	Y	2	4	Which of the following is an example of billing fraud?

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			a	Billing for supplies that are medically necessary
			b	Billing for services provided by a licensed employee
			c	Billing for services that are not medically necessary
			d	Billing for the time spent on a service provided
Y	2	5		Which of the following is a high-risk area for improper or fraudulent conduct?
			a	Payroll
			b	Documentation
			c	Employee benefits
			d	Service animals
Y	1	6		What is fraudulent conduct?
			a	Acting in a manner that knowingly deceives someone for financial benefit
			b	Acting in a manner that ensures the highest quality care
			c	Acting in a manner that protects personal health information
			d	Acting in a manner that treats everyone with dignity and respect
		1	7	Having inefficient or ineffective practices, systems, or control is the definition of which of the following terms?
			a	Fraud
			b	Abuse
			c	Nepotism
			d	Waste
		2	8	When you honestly report a potential compliance violation you are legally protected against retaliation.
			a	True
			b	False
		2	9	Your supervisor comes to you and asks you to document something that did not occur. What should you do?
			a	Document what the supervisor wants you to.
			b	Report the supervisor's request.
			c	Complain loudly and quit your job.
			d	Pretend you did not hear the request.
		2	10	Which of the following describes a whistleblower?
			a	Someone who cheers you on
			b	Someone who organizes company events
			c	Someone who calls attention to wrongdoing
			d	Someone who can whistle very well