

# 2018 Compliance Operations Updates & Risks

*NOT JUST A PAPER PROGRAM*

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# Disclosure

I have no financial arrangements to disclose.

The ideas, opinions and information presented is that of my own and not that of the entity that I work for, represent or may be affiliated with.

# Audience

- ▶ Administrators/Managers?
- ▶ Compliance?
- ▶ QA/RM?
- ▶ All of the above?
- ▶ None of the above?

# What keeps us up at night?

*FEAR ALWAYS SPRINGS FROM  
IGNORANCE...*

- Emerson

► Thoughts? Ideas? Troubles?





A view from the  
inside...

# Audits from the inside...

- ▶ Recent reviews- Mental Health Outpatient
- ▶ Recent reviews- MCO
- ▶ Process explanation
- ▶ Issues – Documentation

# Risk Outcomes

- ▶ Loss of staff/administration
- ▶ Fines;
- ▶ Paybacks/Overpayments & Extrapolation;
- ▶ Investigations
- ▶ CMPs;
- ▶ CIAs or POCAs (OIG & OCR)
- ▶ Postings on Regulatory Sites;
- ▶ Yelp Effect;
- ▶ Criminal Issues; and
- ▶ Shutdown/Closure.



# OMIG Workplan 2018 - MCOs

## **Medicaid Managed Care**

- ▶ OMIG's ongoing efforts include performance of various match-based targeted reviews and other audits identified through data mining, analysis, and other sources. These audits lead to the recovery of overpayments and implementation of corrective actions that address system and programmatic concerns. As more service areas are transitioned into managed care, OMIG will continue to pursue initiatives that significantly enhance the detection of fraud, waste, and abuse in the MMC environment.

## **Network Provider Review Project Team**

- ▶ OMIG's Network Provider Review Project Team will perform audits of providers within MCOs' networks to ensure the accuracy of encounter claim submissions and confirm that provider records are in regulatory and contractual compliance. OMIG will identify improper encounter claims that contribute to inflated capitation payments. OMIG will coordinate with MCOs and their Special Investigation Units (SIU) in its audit efforts.

## **Pharmacy Review Project Team**

- ▶ OMIG's Pharmacy Review Project Team will conduct managed care network pharmacy audits to ensure pharmacy compliance with federal and state regulations, contract requirements, and the pharmacy benefit component of MMC. The team will also pharmacy encounter data to verify accuracy in billing and payment of encounter claims.



# OMIG Workplan 2018 - MCOs

## **Value-Based Payments Project Team**

- ▶ OMIG's Value-Based Payments (VBP) Project Team will continue to work with DOH to: gain an understanding of how value-based payments will be reflected in the Medicaid data; to discuss ways of ensuring integrity within the data; and to ensure access to information is readily available to OMIG to be able to audit and investigate in a VBP environment. VBP team members have also been meeting regularly with DOH to keep OMIG apprised of the best practices and lessons learned from the VBP Pilot program.

## **MC Investigations**

- ▶ OMIG will continue to strengthen the MCO referral process and work with MCO SIUs to coordinate activities related to fraud investigations. Each MCO has been assigned a designated OMIG liaison to work with their SIU representative. OMIG liaisons meet regularly with the MCOs' SIU representative to discuss fraud, waste, and abuse-related referrals and general fraud trends. The liaison process was implemented to improve communications and increase referrals so that appropriate action can be taken to address overall program integrity.

# OMIG Workplan 2018 - FFS

OMIG will conduct audits of various FFS providers in areas of concern or to meet federal waiver requirements. Programs that will be audited include, but will not be limited to:

## Office of Alcoholism and Substance Abuse Services

1. Outpatient Services
2. Inpatient Rehabilitation Services
3. Opioid Treatment Program

## Office of Mental Health

1. Clinic Treatment
2. Continuing Day Treatment
3. Children's Day Treatment
4. Partial Hospitalization
5. Intensive Psychiatric Rehabilitation Program
6. Children with Serious Emotional Disturbances

## Office for Persons With Developmental Disabilities

1. Clinical and Medical Services
2. Day and Residential Habilitation



# Compliance & Privacy Operational Risks

# Staffing

## ► Compliance

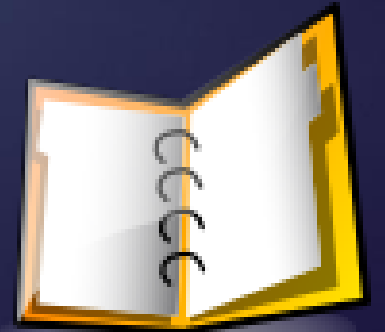
- Reporting structure?
- Is it a department?
- Amount?
- Mixed positions?
- Who do you have to assist in audit/investigations? (aka backup)?
- Budget/pay?
- Clinical persons?
- Privacy mixed in?

# Training

- ▶ Are people aware of who the compliance officer is?
- ▶ Outside training or internally developed?
- ▶ How long?
- ▶ Tailored to role? (i.e. is it different for volunteers / board / staff?)
- ▶ Orientation period? (what does that mean?)
- ▶ Annual? (if not why not?)
- ▶ Board involved?
- ▶ Online or In Person? (when to do which?)
- ▶ CMS Parts C & D Training addition (FWA & General)?
- ▶ Privacy?
- ▶ Ongoing education? (alerts, notices, etc.)?

# Record Keeping

- ▶ Many, many, many different requirements
- ▶ Pay close attention to Medicare PDP & MCO requirements- good start
- ▶ Contractual requirements vs. law?
- ▶ Easily available upon audit
- ▶ Backup / storage capabilities when exploring electronic solutions
- ▶ What if something is missing? (note to file, etc.)
- ▶ Education & Training records (very important)





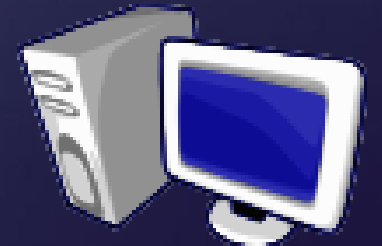
# Effectiveness Reviews

- ▶ Who has had one?
- ▶ Who reviews their program/plan annually?
- ▶ Who doesn't have documentation (policies, procedures, etc.).. shouldn't have to play connect the dots?
- ▶ Who uses OMIG's tool?
- ▶ Do Annually?



# Privacy: Asset Management, Social Media & EMR Access

- ▶ Postings , despite education, have not stopped! (recent NICU issue)
- ▶ Little or not inventory on devices, especially those with PHI
- ▶ Little or not inventory of where things are!
- ▶ Agency failure to have centralized process for activation, allocation of, and de-activation processes
- ▶ Consider IP blocks on EMR access (if possible)?
- ▶ Protocols should be in place for EMR access suspension if investigation
- ▶ Run random and routine audit trails for access info?
- ▶ BAA's in place?



# Privacy: Privacy & Security Assessments

- ▶ Who does them?
- ▶ Audit oneself on privacy?
- ▶ What would one audit? (stick to the basics – auths., NPPs, etc.)
- ▶ External audit for security?
- ▶ Document as part of compliance effectiveness

# Privacy: February 2018 OCR Action

Fresenius Medical Care North America (FMCNA) has agreed to pay \$3.5 million to OCR, and to adopt a comprehensive corrective action plan, in order to settle potential violations of the HIPAA Privacy and Security Rules.

- ▶ The FMC covered entities impermissibly disclosed the ePHI of patients by providing unauthorized access for a purpose not permitted by the Privacy Rule.
- ▶ FMC failed to implement policies and procedures to address security incidents.
- ▶ FMC failed to implement policies and procedures that govern the receipt and removal of hardware and electronic media that contain ePHI into and out of a facility; and the movement of these items within the facility.

# Vendor / Contracting

- ▶ Formalized process for selection? RFPs, etc.?
- ▶ Do they meet all the requirements needed? (should be given something similar to employee manual)
- ▶ Do you avoid COIs when contracting?
- ▶ Keep an eye out for requirements under contract – which are different than your policies/law
- ▶ Do you have legal or compliance reviewing contracts?
- ▶ Do you audit them? (privacy, billing, etc.)?
- ▶ Exclusion Checks? (who what where and when)
- ▶ Are you paying more for contractors than for staff? (because of COIs)



# Vendor / Contracting

## **42 CFR § 438.608 Program integrity requirements under the contract.**

**(b)Provider screening and enrollment requirements.** The State, through its contracts with a MCO, PIHP, PAHP, PCCM, or PCCM entity must ensure that all network providers are enrolled with the State as Medicaid providers consistent with the provider disclosure, screening and enrollment requirements of part 455, subparts B and E of this chapter. This provision does not require the network provider to render services to FFS beneficiaries.

- ▶ Everyone ensure this? Guess who's issue it is?



# Conflicts of Interest

- ▶ Think about the downstream effects? – brings all into question such as monies, services, contracts
- ▶ Stark/AKS Concerns?
- ▶ COI policies for internal issues – strengthen!
- ▶ COI policies for vendors/contractors
- ▶ 2<sup>nd</sup> Jobs (interfering with services)
- ▶ Nepotism (leading to evals., salaries, vacations)



# Client/Patient Risks



# Medication Monitoring/Diversion

- ▶ Are all medications locked/secured?
- ▶ Focus: Are medications locked to protect the client?
- ▶ Focus: Are medications locked to protect the staff?
- ▶ How many times do we do reviews when there are incidents?- what about spot checks?
- ▶ Consider the severity of notifications if confirmed diversions (law enforcement, misconduct if licensed provider, justice center if harm or neglect caused by it)



# Abuse/Neglect

“Ensuring Beneficiary Health and Safety in Group Homes Through State Implementation of Comprehensive Compliance Oversight” – January 17, 2018- OCR OIG report.

- ▶ NYS Justice Center: Neglect

“Failure to provide supervision, or adequate food, clothing, shelter, health care; or access to an educational entitlement.”



# Abuse/Neglect

- ▶ Who monitors the items we mentioned in this section as part of Compliance?
- ▶ Training provided about definitions and expectations?
- ▶ Policies / processes in place for immediate removal of staff if needed?
- ▶ Beware of “boy who cried wolf” philosophy
- ▶ Biggest Risk: Agency Failure to Follow Up!!



# Patient Freedom/Rights

## NYS OMH Rights:

- ▶ The right to freedom from abuse and mistreatment by employees.
- ▶ The right to a reasonable degree of privacy, including bathroom privacy.
- ▶ The right to an individualized service plan and a full explanation of the services provided, and the right to participate in the development of your individualized service plan.
- ▶ The right to be informed of the provider's grievance policies and procedures, and the right to bring any questions or complaints to the director of the program or the organizations listed at the back of this booklet.
- ▶ The right to receive clinically appropriate care and treatment suited to your needs and skillfully, safely and humanely administered with full respect for your dignity and personal integrity.
- ▶ The right to be treated in a way which acknowledges and respects your cultural environment.

# Patient Freedom/Rights

- ✓ Does anyone have interpreter service available?
- ✓ Does anyone have a statement in their mission statement? Policies? Code of Conduct? Statement to the client on admission?
- ✓ NYS DOH requires postings in hospitals – consider same?
- ✓ Are staff trained in cultural competency? Ongoing?

OCR Announces New Conscience and Religious Freedom Division. It will restore federal enforcement of our nation's laws that protect the fundamental rights of conscience and religious freedom. – January 18, 2018.- Only a matter of time.....next audit.....

# Medical Necessity

- ▶ Not as essential in State reviews (yet)
- ▶ Essential for MCOs and Medicaid Managed Care
- ▶ Regulations of Time in Program vs. Actual Stays
- ▶ Do you have policies for assessing program adequacy?-  
and then what to do after you have a negative finding?
- ▶ Licensed clinicians should be used to make determinations
- ▶ Independent persons should be used to make determinations



# Miscellaneous Risks



# Provider Issues

- ▶ Who are we talking about here? (MD, NP?)
- ▶ Exclusions
- ▶ Disciplinary Actions- OPMD/NYS ED DEPT.
- ▶ Expirations of Certifications / Licenses
- ▶ Do they disclose the items above??
- ▶ Understanding medical necessity
- ▶ Consider in depth privacy training

# Overpayments

- ▶ 18 NYCRR 521.3(c)(7) requires compliance programs to include a system for “identifying and reporting compliance issues to the department [DOH] or the office of Medicaid inspector general; and refunding overpayments.”
- ▶ It's ok to make the call to start the 60 day clock
- ▶ Hand over suspected overpayments on a “silver platter” (do your homework)
- ▶ Consult legal (especially if an employee issue and not just routine error)

# Managed Care

- ▶ Review of MCO regs...particular requirements
- ▶ CMS FWA Training/General Compliance Training implementation?
- ▶ Contracts review?
- ▶ Payments/Overpayments issue?
- ▶ Reporting directly to MCO?
- ▶ Audit them? (they may audit you)

## **42 CFR § 438.608 Program integrity requirements under the contract.**

**(5)** Provision for a method to verify, by sampling or other methods, whether services that have been represented to have been delivered by network providers were received by enrollees and the application of such verification processes on a regular basis.

# Things to consider...

- ▶ Penalties discussed earlier;
- ▶ Develop/Enhance Risk Management Processes;
- ▶ Develop/Enhance Security/Privacy Systems;
- ▶ Budgets;
- ▶ Education/Remediation;
- ▶ Policy Changes; and
- ▶ Operational Changes / Staff Changes



# The End- Questions?...Comments?.. Discussion?

Thanks for coming and  
enjoy the rest of the symposium!

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