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## TURNING A MANDATORY COMPLIANCE PROGRAM INTO A STRATEGIC ADVANTAGE

BY: MARK F. WEISS, J.D.

When I say “compliance program,” what thought pops into your head? Paperwork? Waste of time?  
Turkish prison?

The Patient Protection and Affordable Care Act (PPACA), also known as Obamacare, mandates that physicians participating in Medicare or Medicaid have operating compliance programs. Note that these programs must operate at the practice level; compliance cannot simply be outsourced to a billing company.

On Sept. 23, 2010, the Centers for Medicare & Medicaid Services (CMS) took the first step in attempting to define what those mandatory compliance programs must look like by issuing proposed regulations.

Consistent with the probable first thought that popped into your head, the great majority of anesthesia groups will view mandatory compliance programs as a necessary evil: a cost. Not that they don't understand the need to be compliant.

Because groups will have no choice if they wish to remain as providers of Medicare and Medicaid, they will begrudgingly adopt a compliance program. But, let's be honest; only some will actually implement the program on an ongoing basis.

Importantly—and this is the central point of this article—a much smaller minority of group leaders will understand that a compliance program can be used as a further lens through which to focus group strategy in order to wring additional profits from, and opportunity for, one's group. This should be your goal.

### **'Obamacare' and the Proposed Regulation**

The new health care reform law requires that physicians seeking to become Medicare and Medicaid providers establish a compliance program that meets specific core requirements to be adopted by the Secretary of the Department of Health and Human Services (HHS).

The proposed regulations, announced in late September, are the secretary's initial step in adopting the core elements. The proposed regulations include solicitation of comments from the public on the draft core elements. Specifically, the secretary proposed adopting the federal sentencing guidelines' "elements of an effective compliance and ethics program" as the basis for the core elements of the new, mandated Medicare and Medicaid compliance program.

The Table lists draft core elements of the proposed regulations; the language differs from actual language of the sentencing guidelines.

<b>Table. Core Elements of Proposed PPACA Compliance Program</b>
The development and distribution of written policies, procedures and standards of conduct to prevent and detect inappropriate behavior.
The designation of a chief compliance officer and other appropriate bodies (e.g., a corporate compliance committee) charged with the responsibility of operating and monitoring the compliance program and who report directly to high-level personnel and the governing body.
The use of reasonable efforts not to include any individual in the substantial authority personnel whom the organization knew, or should have known, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program.
The development and implementation of regular, effective education and training programs for the governing body, all employees, including high-level personnel and, as appropriate, the organization's agents.
The maintenance of a process, such as a hotline, to receive complaints and the adoption of procedures to protect the anonymity of complainants and to protect whistle-blowers from retaliation.
The development of a system to respond to allegations of improper conduct and the enforcement of appropriate disciplinary action against employees who have violated internal compliance policies, applicable statutes, regulations or federal health care program requirements.
The use of audits and/or other evaluation techniques to monitor compliance and assist in the reduction of identified problem areas.
The investigation and remediation of identified systemic problems, including necessary modifications to the organization's compliance and ethics program.
<b>PPACA</b> , Patient Protection and Affordable Care Act

### **Previous Guidance on Physician Compliance Programs**

Although Obamacare imposes mandatory programs, the federal government has previously issued a number of pronouncements related to health care compliance efforts of providers. Obviously, the federal sentencing guidelines have long used the existence of an operating, effective compliance program as a factor supporting reduced punishment.

And, importantly, on Oct. 5, 2000, the Office of Inspector General of HHS officially announced a "compliance program for individual and small-group physician practices." It is one of several guidance

programs directed at various segments of the health care industry, and continues to provide a relevant road map in compliance efforts.

### **The Obvious Choice Your Competitors Will Not Make**

Under nearly any scenario—other than a total repeal of Obamacare and no replacement legislation—it is nearly certain that mandatory requirements of compliance programs are here to stay.

Your competitors will almost certainly regard compliance programs as “an aggravation” and a cost to be endured. That viewpoint is entirely consistent with the fact that most anesthesia groups, in fact most professional practices, are purely tactical (i.e., purely reactive) to business events: The hospital indicates it has a problem with quality; what to do now? The administrator is thinking of issuing a request for proposal rather than directly entering into renewal negotiations with a group; what to do now?

However, the most successful groups are strategic. They have an overall business strategy, carry through with consistent substrategies and deploy coordinated implementing tactics. Strategy is the filter through which their actions and activities are focused.

Yes, one purpose of a mandatory compliance program under Obamacare will be to assure qualifications for participation in government health care programs. Another will be to reduce the chances for errors that lead to auditing or prosecution. And, the existence of an operating compliance program that conforms to federal sentencing guidelines will help to reduce the consequences of criminal conviction. Each of these purposes is a “pure” compliance program goal and you, too, will incorporate them in designing and implementing your compliance program.

When viewed strategically, your compliance program becomes a tool for you to do more than simply assure “compliance for compliance’s sake.” It is a pivot point around which you can improve your group’s financial performance. For example, the framework of your program can be used proactively to examine and optimize the billing and coding process, minimize billing mistakes, drive faster completion of billing materials and speed of the billing cycle, examine the efficiency of outsourced or in-house billing and collection operations, and examine options for post-billing service collections.

A compliance program also is a pivot point around which to design additional business relationships. In this light, compliance prohibitions are highly useful “negative guides” for what can be done.

## **Conclusion**

One of the core principles of business most often ignored in practice (and almost always ignored by practices) is the advantage of leverage, a business multiplier. You are going to be forced to have a compliance program. You are going to be forced to expend the funds and devote the time and effort necessary to establish and operate it. Obtain leverage by using that same program and the funds, time and effort in a strategic, proactive and profitable way, instead of simply treating them (begrudgingly) as efforts and expenses to be tolerated.

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Mark F. Weiss is an attorney who specializes in the business and legal issues affecting anesthesia and other physician groups. He holds an appointment as clinical assistant professor of anesthesiology at USC’s Keck School of Medicine and practices with the Advisory Law Group, a firm with offices in Los Angeles, Santa Barbara and Dallas. He can be reached by email at [markweiss@advisorylawgroup.com](mailto:markweiss@advisorylawgroup.com) and by phone at 800-488-8014.

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