

## Legal Issues

By Janet K. Feldkamp, JD, RN, LNHA

The Patient Protection and Affordable Care Act of 2010 (more commonly known as health care reform) requires nursing facilities in 2013 to implement “corporate compliance programs” to assist facilities in the prevention, detection, and reporting of fraud and abuse in federal health care programs. The Health and Human Services’ (HHS) Office of Inspector General (OIG) has been recommend-

ing such plans to nursing homes for years but now has mandated implementation.

The kinds of violations the OIG wants to avoid were illustrated in the 2009–2010 case of Cathedral Rock, a small Texas-headquartered nursing home chain, sued for not providing adequate care under Medicare and Medicaid. Owner C. Kent Harrington and the Cathedral Rock Corporation pled guilty

to felony health care fraud and the government agreed to defer further criminal prosecution as long as the company, among other actions, agreed to create and implement a corporate compliance program with several specific features.

The nursing home chain admitted in the plea agreement that there were times when staffing was not adequate, that some ordered wound care had not been

provided, that some residents did not receive medications as ordered, and that medication-administration records were fraudulently altered. The plea agreement also stated that the nursing homes submitted fraudulent claims to Medicare and Medicaid for services that were not provided or were deemed worthless. Fines and penalties amounted to \$1 million.

Under the agreement, the company had to name a corporate compliance officer and establish a code of conduct, develop a compliance committee, undertake quality-assurance monitoring, and implement an internal audit program. Stringent employee training and independent monitoring were also required.

Many nursing facilities already have voluntary corporate compliance programs. The health reform act requires that all do, with an ethics program included, by March 23, 2013. Although regulations for the programs haven’t been finalized, guidance that the OIG issued in 2000 and supplemented in 2008 is a good place to start if you’re establishing a corporate compliance program or reviewing the one you have. According to the OIG, a compliance program should:

- ▶ Implement written policies, procedures, and standards of conduct.
- ▶ Designate a compliance officer and compliance committee.
- ▶ Conduct effective training.
- ▶ Develop good lines of communication.
- ▶ Enforce standards through well-publicized disciplinary guidelines.
- ▶ Conduct internal monitoring and auditing.
- ▶ Respond promptly to detected offenses and develop corrective action.

An effective program can greatly reduce fraudulent or abusive behavior by employees, contractors, and vendors, and it can define how a facility proceeds when standards might have been breached. Simply stated, the compliance program should be the road map to navigating the difficult area of possible health care fraud and abuse in your organization.

Watch for HHS’s development of corporate compliance regulations this year. But don’t wait to implement a program or update the one you have. One benefit of a corporate compliance program is the comfort in knowing that the organization is addressing quality of care while appropriately billing for the services it provides to residents. The OIG’s 2008 guidance document is available by going to [www.oig.hhs.gov/compliance](http://www.oig.hhs.gov/compliance) and searching for “2008 nursing facilities.”

*This column is not to be substituted for legal advice. The writer, JANET K. FELDKAMP, practices in various aspects of health care, including long-term care survey and certification, certificate of need, health care acquisitions, physician and nurse practice, managed care and nursing related issues, and fraud and abuse. She is affiliated with Benesch Friedlander Coplan & Aronoff LLP of Columbus, Ohio.*