



Compliance Matters Winter 2016

Announcing the Compliance Department's 2016 Work Plan

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iPOP QUIZ!

During what war was the False Claims Act (31 U.S.C. §3729 – §3733) passed?

**Answer will appear in the Spring 2016 edition of Compliance Matters

Happy New Year! 2016 will bring many exciting changes and advancements across Philadelphia's behavioral health system. The CBH Compliance Department is planning to tackle quite a few important goals this year:

- The Compliance Department will be shifting its overall focus to Special Investigations and Targeted Audits for the year.
 - This will include the implementation of statistically significant random sampling and extrapolation processes.
- The Routine Investigation and Training Unit will shift focus to monitoring outpatient services and laboratory services.
- The Network Personnel Analysis Unit will continue to explore issues regarding foreign obtained degrees.
- All units will move to tracking clock times for individual clinicians
 - Targeted audits of impossible days
 - Discrepancies in documentation
 - Ability to report encounter data
- The Compliance Department aims to review internal business rules and establish new claim edits. As this occurs, there will be clear communications with provider agencies.
- Transition the Routine Audit process to include more Corrective Action Plans for providers with historically poor audit performance (see page 5 for more details regarding this process).

We look forward to working diligently both internally and externally on all *compliance matters* in order to ensure quality service delivery!

Do We Have Clearance, Clarence?

The Commonwealth has been busy at work making revisions to the Child Protective Services Law (CPSL). As you may recall, CBH recently announced that we would move to have renewals of all clearances due at a minimum of every three years. This was done to be consistent with an earlier revision to the CPSL. The Commonwealth recently announced changes that now make clearance updates due every five years. In order to remain consistent with the Commonwealth's requirements, CBH will also require Child Abuse, FBI, and State Police Criminal Background checks to be updated at minimum every five years. Agencies may, should they choose, continue to request updates more frequently. Also as stated by the Commonwealth,

clearances are portable. So, employees may furnish clearances up to five years old to prospective new employers. Please note, the changes referenced by the Commonwealth apply to staff providing care routinely to children. CBH is applying the 5 year renewal standard/expiration to all staff for their required background clearances. As a reminder, staff who do not provide care to children are still required to provide and update criminal background checks and in some cases, FBI background checks.

From the Tool Shed

In early 2016, CBH contracted providers will receive a new and updated staff roster tool. The tool will be in the form of a Microsoft Excel spreadsheet that our providers will complete for all clinical staff. Instructions will be provided with the staff roster tool

and we hope to have the tool and instructions posted as downloadable items on the CBH website as well. The tool will contain Excel 'wizardry' that will enable CBH staff to more quickly and efficiently assist the provider in confirming that minimum staff credentialing standards have been met. If your agency does not have access to Microsoft Excel, please alert your Provider Relations Representative as soon as possible so that we may work to assist you in determining a method to provide the information. We will also provide a deadline at the time the tool is provided for CBH providers to furnish a completed staff roster back to the Compliance Department.

**MRPFF
Madness!**

A Tough Call: Whistleblower Protections

If you had the power to read minds – the ability to peer into the inner-workings of behavioral health care workers' minds would be reminiscent of the TV show *Herman's Head*. For those too young to remember (some would argue, for those with taste in television, as well), the show featured one person's conflicting personality traits and emotions battling over nearly every emotion. For modern healthcare workers, the mind is constantly bombarded with issues ranging from the mundane (how many slices of pizza is TOO much? Can you really catch a cold from not wearing a coat in winter?) to those unique to our settings (Can I tell them that and still be compliant with HIPAA? Do we have to follow the policy EVERY time?).

Perhaps no conundrum is as difficult as when an employee attempts to address actions of their employer that he/she finds to be questionable, possibly crossing into the area of illegal activity. Staff are forced to weigh the options to address troublesome behavior and the potential impact of their actions on their careers. Medicaid, a program managed by both the state and federal government, is subject to a vast array of complicated rules and regulations that require strict compliance in order to guarantee reimbursement. While reporting noncompliance with these rules is the best way to avoid sanctions, individuals may fear that exposing their organization or their supervisors or colleagues may result in

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retaliation or harassment. Acknowledging these challenges, the Federal False Claims Act has included provisions to protect potential "whistleblowers". Several states have also enacted Whistleblower acts, including the Commonwealth of Pennsylvania.

Employees should address potential problems first directly with their employers. Within the CBH network, all providers should have a clear mechanism for staff to report questionable behavior within the provider agency. Many times, an employee's first course of action is to report concerns to a supervisor and/or a compliance official. In situations where the provider agency does not address the concerns raised and subsequently submits claims that are considered to be "false claims" under Medicaid and/or Medicare, employees may seek to file suit under the False Claims Act and/or to report their concerns outside of the employer's 'chain of command', to government agencies and/or payers.

If the complaint:

- is made subsequent to failed attempts to address or remediate the concern(s);
- pertains to actions that violate State and/or Federal law resulting in loss of public funds; and
- is filed in "good faith;"

the employee, in the Commonwealth of Pennsylvania, is protected from an employer's efforts to retaliate. Specifically, the employer may not discharge the employee, threaten the employee in any way, or discriminate against the employee in any manner. If this protection is violated and the above requirements have been met, there are civil and criminal remedies that the employee may seek against the employer.

It is important to note that Pennsylvania defines "good faith" as part of the Whistleblower act. Specifically, the employee must have reasonable cause to believe that the issue precipitating the false claims report is accurate and must file the report without malice or consideration of personal gain.

Providers should not operate in fear potential whistleblowers; rather, learn to embrace them as an effective early warning system alerting the employer of problems within the organization. If ignored, the problems may continue to grow to levels that can jeopardize the stability of the entire organization. Investigating the employee's concerns may allow for swift correction to policies and procedures, mitigating potential damage, and encouraging a culture of compliance within the organization. An employee who in good faith has wrestled with the Herman's Head-type scenario and feels strongly enough to report concerns through the organization's hierarchy, should be listened to closely.

Pennsylvania Whistleblower Law –

Act 169 (1986)

<http://www.legis.state.pa.us/WU01/LI/LI/US/PDF/1986/0/0169..PDF>

Act 87 (2014)

<http://www.legis.state.pa.us/WU01/LI/LI/US/PDF/2014/0/0087..PDF>

Act 88 (2014)

<http://www.legis.state.pa.us/WU01/LI/LI/US/PDF/2014/0/0088..PDF>



**CONFIDENTIALLY REPORT FRAUD, WASTE, and ABUSE.
1-800-229-3050 or
CBH.ComplianceHotline@phila.gov**

It's Elementary...

Compliance Matters will use this column to publish an article each quarter regarding one of the seven core elements of a successful compliance program, as outlined by provisions in the Patient Protection and Affordable Care Act 42 U.S.C. § 18001 (2010)

Have you ever struggled with developing a policy on creating policies? Have you ever pondered whether there really is a need for a policy to direct the creation of policies? If so, you may find this article of interest and you may well be in a compliance role and not even know it.

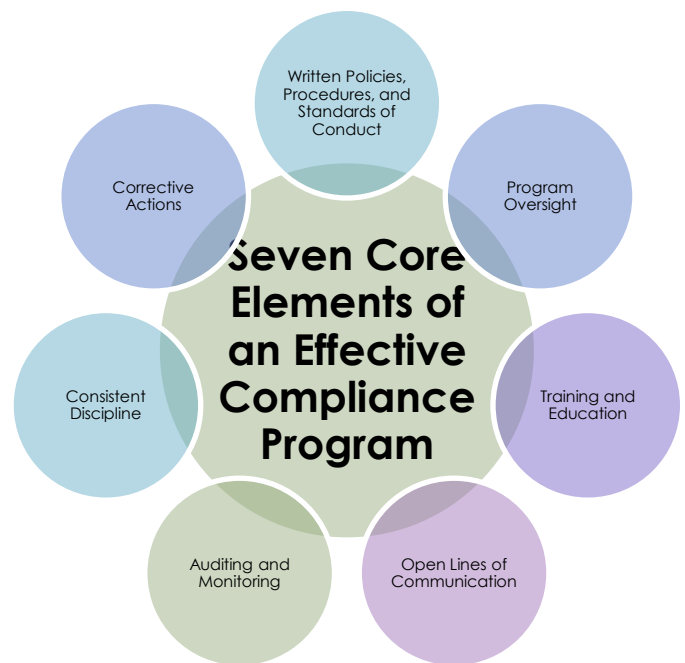
The foundation of an effective compliance program is written policies, procedures, and standards of conduct. CBH is not exempt from the need for policies and procedures. Currently, there are over 180 policies in place for CBH, 17 of which are devoted solely to compliance efforts with another 45 devoted solely to finance related activities. In fact, CBH has a workgroup tasked with the on-going review, revision, and development of agency policies.

When a new provider or program seeks to enter the CBH network, Network Development reviews a minimum of 30 policies as part of the initial credentialing review. Clearly there is a regulatory requirement for policies and procedures. However, there are real world benefits for providers to develop and implement necessary policies and procedures.

The purpose of policy is twofold:

- To communicate expectations and how to do the right thing.
- To provide mechanisms for correcting behaviors that fall short of agency expectations.

Each is equally important. Let's start with a framework for "the right path". Those who have spent time hiking are familiar with blazes. These are typically colored swatches of paint placed on trees to make sure hikers stay on the right path. One can consider agency policies as the blazes that aim to keep employees on the right path. In healthcare settings, the blazes help ensure that staff are meeting quality standards, stay within ethical boundaries and are compensated for services that meet applicable state and Federal standards. The vast majority of staff employed in behavioral healthcare enters the field to help individuals in need. Most, if not all, though arrive on our providers' doorsteps fresh from an educational system that has provided a foundation of conceptual



frameworks, understandings of diagnoses, and ethical considerations for 'treatment'. Most arrive without a single minute devoted to how to write an effective session note or treatment plan. Even fewer arrive at an employer's doorstep with an understanding of Current Procedural Terminology (CPT) codes and the difference between collateral and family therapy. Agency policies and procedures provide the first step in rounding out a new employee's training. And much like blazes in the forest, they need to be obvious and conspicuous to be the most effective.

In hiking, almost everyone will, at some point, wander off the correct trail. Some 'bushwhackers' intentionally hike off-trail through the wilderness ignoring the harm that can come to the ecosystem by blazing their own trail. Provider agencies will have similar experiences with staff. Some well-meaning staff will go astray and some will, unfortunately, have more nefarious intentions in going rogue. The second main goal for policies is to catch these employees early on in their trek off-trail and correct the behaviors before too much damage has been done. An effective compliance program is judged, in part, by identifying compliance break-downs early and taking decisive actions quickly to address them. Agency policies should clearly articulate not only steps for how the agency will monitor the effectiveness of policy and practice, but also clear disciplinary guidelines for those who choose to ignore the blazes in front of them.

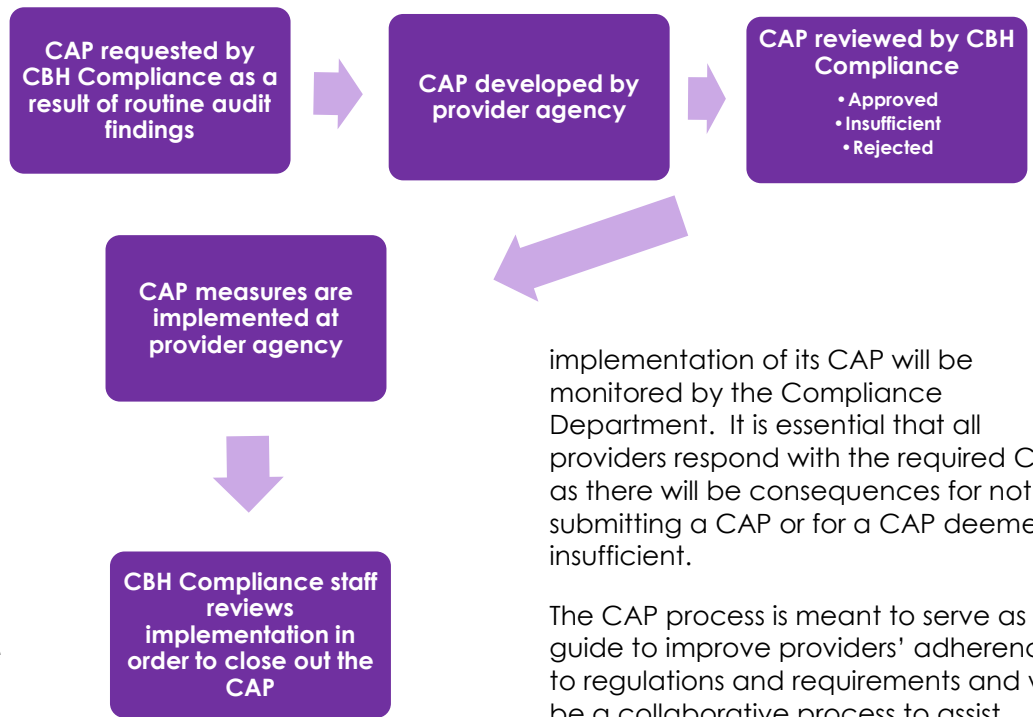
Perhaps your agency's New Year's resolution can be to dust off the policy and procedure manual and take time during 2016 to review and update as necessary. Also, if the manual is in fact dusty, resolve to promote the policies and procedures to staff so that they are as conspicuous as a bright red blaze at eye level on a big oak tree in the forest.

Put on Your Thinking CAPs

The Compliance Department at CBH has followed similar processes for routine audits since its inception in 1998. Historically, when a provider received an initial error rate higher than 25% in any given program, a meeting was required to discuss concerns identified during the audit. Following the meeting, the provider had the opportunity to dispute audit findings. A final error rate was then determined upon review by a Compliance Analyst who was not involved in the original audit.

Upon analysis of error rate trends across the provider network, the Compliance Department has decided to revise routine audit processes in an effort to encourage continuous improvement. Cue, the Corrective Action Plan (CAP) process. New error rate thresholds have been established to reflect different expectations of unit-based and per diem services, as well as to align with current trends in error rates across the provider network. CAPs will be required of all unit-based programs that receive an initial error rate greater than 34.1% and of per diem programs that receive an initial error rate greater than 20.1%. Please note that new programs that have never had a compliance audit will be exempt from the CAP process at the time of their initial compliance audit, which is meant to be educational.

CAPs are loosely defined as provider documentation of purposeful steps to effect change based on recommendations and requirements from the Compliance Department. The ultimate purpose of the CAP process is to guide provider agencies in the reduction of



fraud, waste, and abuse.

CAPs will be in lieu of required meetings for all providers that have had a history of two or more consecutive meetings, although providers are always welcome to request a meeting with compliance staff for educational purposes. Both required and recommended corrective actions will be identified in the report prepared by the compliance analyst(s) completing the audit. Providers are expected to respond with a CAP within three weeks of receipt of the report. As CAPs are meant to be a reflection of audit findings, expectations will be extremely varied and highly specialized to the identified deficits of each program.

CAPs will undergo a review process by the Compliance Analyst who completed the audit as well as the CBH Compliance Committee and can be approved, deemed insufficient, or denied. As necessary, a provider's

implementation of its CAP will be monitored by the Compliance Department. It is essential that all providers respond with the required CAP as there will be consequences for not submitting a CAP or for a CAP deemed insufficient.

The CAP process is meant to serve as a guide to improve providers' adherence to regulations and requirements and will be a collaborative process to assist providers in overall progress.

In the next issue:

- Compliance Program Oversight
- The Clock is Ticking – 60 Day Rule
- From the Junk Drawer...General Compliance Updates

Suggestions for future Compliance Matters features?

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