



DENTAL COMPLIANCE SPECIALISTS

Serving & Protecting Dental Professionals

Top Compliance Issues Dentists Face




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Overview

-  Affordable Care Act's impact in dentistry from a compliance standpoint
-  RAC Program
-  Common Medicaid Compliance Issues
-  New SBDE Rules
-  Top 10 Compliance Issues
-  Wrap Up

The PPACA and what it means for Texas Dentistry

-  Mandatory Compliance Programs for all Healthcare providers who submit claims to a government program (Medicare and Medicaid)
-  + Requires compliance program as per Social Security Act section [1866\(j\)\(8\)\[661\]](#), which states, “The Secretary, in consultation with the Inspector General of the Department of Health and Human Services, shall establish core elements for a compliance program”
-  + To date nothing defined, but we have the **Federal Sentencing Guidelines** and **7 Core Components of an Effective Compliance Program** as guidance from HHSC (OIG), which created compliance guidelines in early 2000’s

Chapter 8 – 2011 Federal Sentencing Guidelines

Definitions:

"Organization", includes corporations, partnerships, and associations

"Compliance and ethics program" is designed to prevent and detect criminal conduct.

"Small Organization", has fewer than 200 employees.

7 Components of an Effective Compliance Program

1. Conducting internal monitoring and auditing*;
2. Implementing compliance and practice standards;
3. Designating a Compliance Officer or contact;
4. Conducting appropriate training and education;
5. Responding appropriately to detected offenses and developing corrective action;
6. Developing open lines of communication; and
7. Enforcing disciplinary standards through well-publicized guidelines.

*OIG recommends auditing at least annually

Two Powerful Enforcement Tools

 False Claims Act

 Civil Monetary Penalties Law

False Claims Act (aka Lincoln Law)

- Imposes liability for persons or organizations that “knowingly” submit claims that are false or erroneous to the government for payment.
- No need to prove the claimant intended to commit fraud.
- Reparations **3** times the amount of the claim, plus damages up to **\$11,000** per claim
- Qui Tam component of FCA allows private citizens (whistleblowers) to sue for violations and received up to **30%** of monies collected by the government
- + Primary tool that is sending healthcare providers to prison**

Examples of False Claims

1. Services provided by unlicensed clinician
2. Duplicate billing
3. Upcoding (to obtain a higher reimbursement)
4. Billing for services not actually provided
5. Insufficient documentation to support medical necessity
6. Providing remuneration for referrals (Anti-Kickback Law)
7. Incorrect information on claim forms
8. Services provided by excluded provider/ employee
9. Failure to meet the Standard of Care
10. Billing for full-fee when non-Medicaid recipients are provided the same services for a lesser fee

11. This list is NOT exhaustive!

Civil Monetary Penalties Law

- Civil Settlement for violations similar to those listed under the FCA
- In an **Anti-Kickback** case, the OIG may seek a penalty of up to \$50,000 for each improper act and damages of up to three times the amount of remuneration at issue (regardless of whether some of the remuneration was for a lawful purpose). 42 U.S.C. § 1320a-7a(a).





Corporate Integrity Agreement

“Is a document that outlines the obligations an entity agrees to as part of a civil settlement. An entity agrees to the CIA obligations in exchange for the OIG’s agreement that it won’t seek to exclude an entity from participation with Medicare, Medicaid, or other Federal health care programs.”



- + Typically require implementation of the **7** core elements of OIG recommendations for building a model compliance program and much, much more!

CIAs Provide Us Learning Opportunities

-  All Smiles Dental Center
-  Heartland Dental Care, Inc.
-  FORBA Holdings Inc. (Small Smiles Dental)
-  The University of Medicine and Dentistry of New Jersey




CIA of The University of Medicine and Dentistry of New Jersey

-  Compliance Officer and Committee
-  Written Standards
-  Training and Education
-  Compliance with Anti-Kickback Statute and Stark Law
-  Review Procedures (Auditing by an Independent Review Organization)

-  Disclosure Program (Whistleblower policies, Training and Internal Reporting Hotline)
-  Ineligible Persons Exclusion
-  Notification of Government Investigations or Legal Proceedings
-  Repayment of Overpayments
-  Annual Reporting
-  Required Incident Reporting

Whistleblowers and the Federal Deficit Reduction Act of 2005

Effective January 2007 all providers who receive an amount equal to or greater than **\$5** million a year from government programs are required to provide detailed information about federal and state fraud and false claims laws and the whistleblower protections afforded by those laws.

-  Providers notified if they are subject to DRA.
-  Large numbers of providers fail to read fine print on the notifications and sign attestations of compliance with DRA, but in actuality may not have.
-  Non-compliance can trigger False Claims Act

New York Response to Fraud, Waste and Abuse

1. Revisited DRA and lowered the threshold from \$5 million/year to \$500K/year
2. As of 2009 required mandatory compliance programs similar to the HHS recommendations (7 components for a model compliance program)
3. Violations enforced
 - + Fines
 - + License Suspension/ Revocation
 - + Exclusion from Medicaid program

Recovery Audit Contractor (RAC) Program

- Due to the size of “Denticaid” issue, Dentistry is a prime target for implementation of the RAC program in Texas
- Government contractors to audit providers in search of overpayment
- Texas is in the process of selecting their RAC, which is narrowed down to two providers, both of whom were awarded contracts in many other states.

Recovery Audit Contractor (RAC) Program Concerns

RACs are paid a % of recovered overpayments

- New York RACs receive over **5%** for the first \$125 million recovered in a calendar year
- **6.25%** for anything recovered beyond \$125 million
- Under ACA, 9.5 – 12% contingency fees

Recovery Audit Contractor (RAC) Program **Concerns**

Substandard documentation

- + Diagnostic radiographs, photos, etc.
- + Documentation of medical necessity for treatments provided (demonstration of need vs. alternate treatments)
- + Ensure every claim is supported by: Exam findings, Diagnosis, Treatment plan, Treatment notes,
- + Lack of proper consent for treatment
- + Dentists need to sign their notes

Recovery Audit Contractor (RAC) Program **Concerns**



Overpayments identified and corrected by provider

- + Missing (poor) documentation (including photos and radiographs)
- + Standard of Care (Failure to meet or Overtreatment)
- + Billing Issues (Billing for services not rendered, Double billing, Treating Dentist not properly identified on claims)
- + Non-credentialed Dentists providing services; Care provided by unlicensed clinicians (including lapse of licensure)
- + Improper coding: Upcoding, Unbundling, Wrong code



Medicaid Compliance Concerns

- Proper credentialing of associates in multi-Dentist practices
- Proper credentials and proper use of credentials
- Need to document sufficient detail of exam findings, necessity of and provision of treatment
- Proper consent for treatment
- Proof of above-listed items (consider liberal use of digital photography for pre and post-op photos)
- Standard of Care
- Avoiding use of unlawful advertising and inducements



New SBDE Rules

-  Any person who practices dentistry must display his full name as it appears on his license or renewal certificate issued by the board, or his commonly used name, outside the primary entry of each location at which he practices dentistry.
-  Each dental office shall post at or near the entrance of the office in an area visible to the public, the name of, each professional degree received by and each school attended by each dentist practicing in the office.

New SBDE Rules



-  The name of the owner shall be prominently displayed and only the names of the dentists who are engaged in the practice of the profession at a particular location shall be used.
-  A dentist practicing under a corporation, company, association or trade name shall give each patient the name and license number of the treating dentist, in writing, either before or after each office visit, upon request of a patient.

New SBDE Rules

-  A licensed Texas dentist, in any professional communication concerning dental services, shall include the dentist's dental degree; the words "general dentist" or "general dentistry;" or an ADA approved dental specialty if the dentist is a specialist in the field designated.
-  Each dentist practicing under a corporation, company, association or trade name shall file notice with the board of every corporation, company, association or trade name under which that dentist practices upon initial application for licensure and annual license renewal.

New SBDE Rules

May NOT

-  Waive co-pays or deductables
-  Represent that services are "free" when there is remuneration by a third-party payor, including Medicaid or Medicare

New SBDE Rules

- A dentist shall not communicate or imply that he/she is a specialist when providing specialty services, whether in a general or specialty practice, if he or she has not received a certification from an accredited institution.
- The burden of responsibility is on the practice owner to avoid any inference that those in the practice who are general practitioners are specialists

New SBDE Rules

- A general dentist who advertises "ORTHODONTICS" and "DENTURES" and/or "IMPLANTS" shall include a disclosure of "GENERAL DENTIST" or "GENERAL DENTISTRY" in a font size no smaller than the largest font size used for terms 'orthodontics,' 'dentures' and/or 'implants.'

New SBDE Rules

- Any form of broadcast advertising by a general dentist (radio, television, promotional DVDs, etc) shall include either "General Dentist" or "General Dentistry" in a clearly audible manner.




New SBDE Rules

- A dental health article, message or newsletter published in print or electronic media under a dentist's byline to the public must make truthful disclosure of the source and authorship of the publication.
- If compensation was made for the published communication, a disclosure that the communication is a paid advertisement shall be made.

New SBDE Rules

- A guarantee to return a fee if the patient is not satisfied with the treatment rendered is allowable

New SBDE Rules





-  Testimonials are now allowed, as long as they are from a patient of record and the patient's identity is disclosed and the statement made is not false, misleading or deceptive.
- 
 Photographs of actual patients of the dentist may be used upon receipt of written consent from the patient.

New SBDE Rules

- A licensee may offer, give, dispense, distribute or make available directly to a potential patient, a non-cash gift valued at no more than ten dollars to secure or solicit the potential patient.

New SBDE Rules

Dental practice websites should clearly disclose:

-  (1) ownership of the website;
-  (2) services provided;
-  (3) office addresses and contact information; and
-  **(4) licensure and qualifications of dentist(s) and associated health care providers.**

New SBDE Rules

A pre-recorded copy of all broadcast advertisements, a copy of print advertisements and a copy of electronic advertisements shall be retained for four years following the final appearance or communication of the advertisement.

New SBDE Rules

VISUAL DENTAL HEALTH INSPECTIONS

An inspection made by students engaged in a formal education program in dentistry or dental hygiene or **by health care workers, other than dentists, dental hygienists, dental assistants, physicians and physician assistants.**

New SBDE Rules

VISUAL DENTAL HEALTH INSPECTIONS

Health care worker -- A person who furnishes health care services in direct patient care situations under a license, certificate, or registration issued by the state.

New SBDE Rules

VISUAL DENTAL HEALTH INSPECTIONS

Patient of Record - A patient who has been examined and diagnosed by a licensed dentist and whose treatment has been planned by a licensed dentist.

New SBDE Rules



VISUAL DENTAL HEALTH INSPECTIONS

Limited Oral Evaluation - A non-comprehensive evaluation of an individual who is not a patient of record made by a licensed dentist for the following limited purposes:

- (A) screening for symptoms of oral cancer; and/or
- (B) evaluating minors or members of underserved populations for current or potential dental problems.

New SBDE Rules

VISUAL DENTAL HEALTH INSPECTIONS

-  A visual dental health inspection is performed as a group activity taking place in a school or other institutional setting for the purpose of making a gross assessment of the dental health status of group members, at no cost to the members.
-  + It is cursory and does not involve the use of dental instruments, though use of gloves, tongue depressors and intra oral lighting is encouraged.

New SBDE Rules

VISUAL DENTAL HEALTH INSPECTIONS

Individuals performing visual dental health inspections in accordance with this chapter do not engage in the practice of dentistry if the inspection process is limited to recognizing when tissue does not appear normal and encouraging the member to appoint with a licensed Texas dentist.

New SBDE Rules

VISUAL DENTAL HEALTH INSPECTIONS

A visual dental health inspection may be performed by a dentist, dental student, dental hygienist or dental hygiene student to conduct research or for educational purposes in the field of dentistry or dental hygiene

Top Ten Compliance Issues

-  Outdated OSHA safety programs
-  Outdated HIPAA compliance programs
-  Failure to comply with mandatory training requirements
-  Failure to document training
-  Failure to follow proper Infection Control practices

-  Failure to maintain proper credentials
-  Inadequate or outdated HR policies and practices
-  Inadequate or lack of customer services emphasis
-  Improper advertising/incentives
-  **Poor record keeping/billing practices**

WRAP UP

“Texas currently ranks among the bottom eight states in the nation in the number of dentists per 10,000 residents, according to Kaiser State Health Facts. Additionally, nearly 20 percent of residents live in the 115 Texas counties that are Dental Health Professional Shortage Areas as designated by the U.S. Department of Health and Human Services and 46 Texas counties have no dentists whatsoever. Just as troubling, the dentists note that Texas’ underserved dental care areas are increasing as the overall population of Texas expands.”

— By Texas Coalition of Dental Support Organizations

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