

March 30, 2012

## *Compliance Plans: Self-Defense Help for Every Officer, Manager and Board Member*

The era of voluntary compliance programs is over.

In its fight against fraud, abuse and waste, the federal government is now requiring health care providers and suppliers that participate in federal programs to have mandatory compliance plans. In addition, managers, officers and board members are subject to the “responsible corporate officer” doctrine, which can hold individuals criminally liable for unlawful activities that occur within their health care organizations even if these individuals were unaware of unlawful activities and did not personally participate in them. Further, individual owners, managers or officers may be excluded from future federal program participation if these individuals should have known of an organization’s misconduct. This will likely spell the end of a career.

With everything at stake, failure to heed the federal government’s requirement to have a compliance plan to prevent fraud, abuse and waste within a health care organization can result in both an individual and organizational knockout. A compliance plan cannot just exist on paper in a binder collecting dust. To be effective, providers and suppliers must be able to prove to regulators that their organizations’ live and breathe compliance.

Section 6401 of the Patient Protection and Affordable Care Act of 2010 (“PPACA”) requires that providers and suppliers establish compliance programs as a condition of Medicare enrollment. In a September 2010 proposed rule to implement PPACA, the Department of Health and Human Services (“HHS”) indicated that compliance program core elements will be similar to the core elements of effective compliance plans described in the U.S. Federal Sentencing Guidelines Manual. The core elements for an effective compliance program require all of the following:

1. individuals with authority and resources must be assigned to oversee compliance
2. written policies and procedures
3. designation of compliance officer and compliance committee
4. compliance training and education
5. effective lines of communication
6. well-publicized disciplinary standards
7. monitoring and auditing
8. investigation, response and corrective action.

The Federal Sentencing Guidelines also require health care organizations and providers to undertake periodic reviews

of their compliance programs to ensure their effectiveness. An effectiveness audit should review a system of measures, checks and balances to ensure the compliance program is working. Compliance effectiveness audits also review known or likely risks and how they are identified, monitored, mitigated, tracked and corrected. In addition to documentation, key structural processes are reviewed. Compliance audits may include self-assessments, employee surveys, and interviews with key personnel, responses to questionnaires and other audit tools. In addition to findings, compliance audits offer recommendations on how compliance activities can be made more effective. The specific date for the compliance program requirement has not been provided yet, but responsible providers and suppliers should already have effective compliance plans in place as a “best practice,” standard of care and a mitigating factor under the U.S. Federal Sentencing Guidelines in the event the federal government claims fraud, abuse or waste.

Health care providers and suppliers that do not currently have a compliance plan need to develop and implement one. Those that already do have compliance plan should consider undertaking an independent audit to assess the “effectiveness” of the plan in deterring, investigating and reporting non-compliant conduct.

If you have questions, please contact the authors of this Client Alert, a member of the Butzel Long Health Care Practice Group, or your regular Butzel Long attorney.

**Susan H. Patton**  
734 213 3432  
[patton@butzel.com](mailto:patton@butzel.com)

---

**Health Care Industry Group**

**Robert H. Schwartz**  
248 258 2611  
[schwartzrh@butzel.com](mailto:schwartzrh@butzel.com)

**Thomas R. McAskin**  
248 258 2511  
[mcaskin@butzel.com](mailto:mcaskin@butzel.com)

**Susan H. Patton**  
734 213 3432  
[patton@butzel.com](mailto:patton@butzel.com)

**Adele P. Jorissen**  
248 258 7864  
[jorissena@butzel.com](mailto:jorissena@butzel.com)

**Rebecca S. Davies**  
313 225 7028  
[davies@butzel.com](mailto:davies@butzel.com)

Copyright 2012, Butzel Long, a professional corporation  
Any reproduction without permission of the author is prohibited.

The above news is only intended to highlight some of the important issues. This e-mail has been prepared by Butzel Long for information only and is not legal advice. This information is not intended to create, and receipt of it does not constitute, a client-lawyer

relationship. Readers should not act upon this information without seeking professional counsel. This electronic newsletter and the information it contains may be considered attorney advertising in some states. If you feel you have received this information in error, or no longer wish to receive this service, please follow the instructions at the bottom of this message.

Attorney Advertising Notice - The contents of this e-mail may contain attorney advertising under the laws of various states. Prior results do not guarantee a similar outcome.

For previous e-news or to learn more about our law firm and its services, please visit our website at: [www.butzel.com](http://www.butzel.com)

Butzel Long Offices:

Ann Arbor  
Bloomfield Hills  
Detroit  
Lansing  
New York  
Washington D.C.

Alliance Offices:

Beijing  
Shanghai  
Mexico City  
Monterrey

Member:

Lex Mundi