

MEDICARE ADVANTAGE AND PRESCRIPTION DRUG PLANS

Assessing Your Plan's Risk and Prioritizing Compliance Resources

Elizabeth Lippincott & Tom Bixby
HCCA Managed Care Conference
February 23, 2010

Overview

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- Forecasting CMS Oversight Priorities
- Regulatory Climate and CMS Oversight Approach
- Conforming Internal Oversight to CMS Model
- Proposed CMS Rule's View on Effective Compliance Programs

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Forecasting CMS Oversight Priorities

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Forecasting CMS Oversight Priorities

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- Last Quarter
 - Recent Enforcement Actions
 - Timely ANOCs/EOCs
 - Marketing violations
 - Corrective Action Plans
 - Enrollment/disenrollment
 - Grievances/organization determinations
 - Policies & procedures
 - Compliance programs

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Forecasting CMS Oversight Priorities

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□ Current Year

- CMS Call Letter (2010)
 - Targeted, data-driven, risk-based audits
 - Potential for beneficiary harm
 - Compliance programs
 - Data validation audits

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Forecasting CMS Oversight Priorities

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□ Current Year

- OIG Workplan
 - Vendor oversight, validation of Pharmacy payments and recoveries, and PBM oversight
 - Beneficiary appeals
 - Plan compliance with disenrollment periods
 - Culturally & linguistically appropriate services
 - E-prescribing
 - Risk adjustment data – appropriate risk coding

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Forecasting CMS Oversight Priorities

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□ Forecasting Future Priorities

- **OIG Workplan & Audits**
 - Investment income
 - More on marketing (agents)
 - PDE data validation
- **GAO Audits/Reports**
 - FWA & Compliance Programs
 - Marketing

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Regulatory Climate and CMS Oversight Approach

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Being a Medicare Compliance Officer is Tougher Than Ever

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Critics of MA and PDP programs pressuring Congress and Obama Administration

Administration responding to pressure and media attention with high expectations for oversight

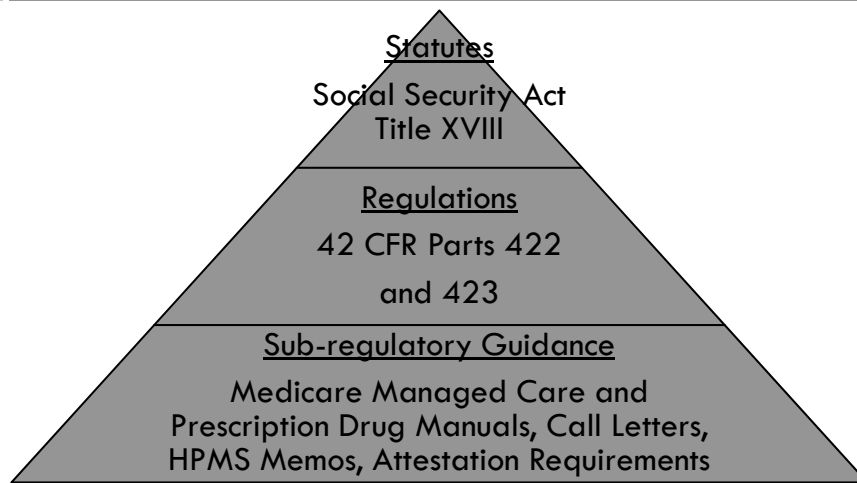
CMS increasing scrutiny of plans



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Change Can Happen without Congress

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Intent Expressed in Proposed CMS Rule

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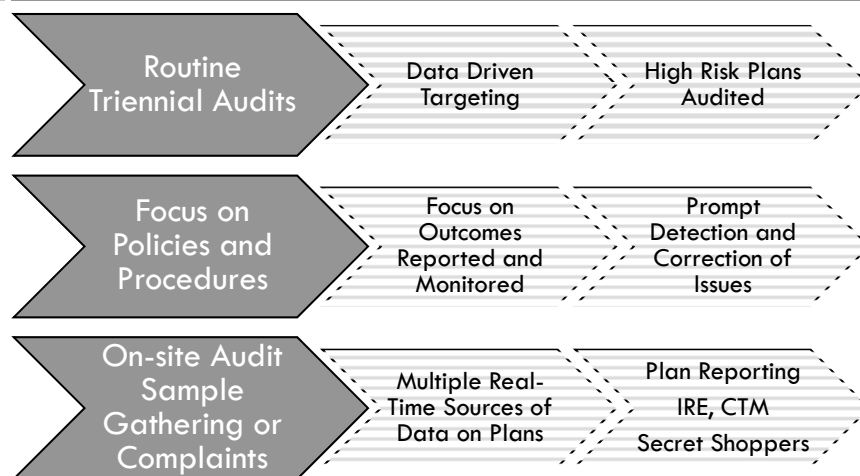
Includes “[a] number of proposals designed to strengthen our ability to approve strong applicants *and remove poor performers* in the Part C and D programs” (emphasis added)

Source: Preamble to Proposed Rule CMS-4085-P, October 22, 2009.

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Traditional vs. Data Driven Oversight

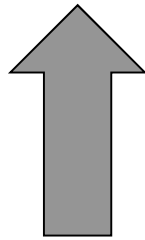
12



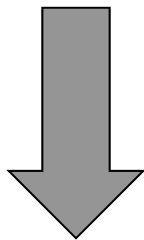
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The Elephant in the Room

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Risk and
Costs



Reimburse-
ment



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Need for Strong Commitment by Plan Leadership

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Action Item

Evaluate your compliance program and operations in light of changes and assess costs of closing any gaps. Escalate concerns or needed resources to plan leadership.

- Complexity and cost of administering MA and PDP plans is increasing, along with compliance risk
- Raise awareness of new environment
 - ▣ Senior executives
 - ▣ Board, Audit Committee
- A plan's senior leadership needs to be committed to investing adequate resources to administer the programs in compliance with increasingly stringent requirements

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Conforming Internal Oversight to CMS Model

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Develop a Data-Driven, Outcome-Focused Compliance Program

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Action Item

Evaluate your plan's Medicare compliance program. Is it outcome-focused? Is it tracking performance measures that reflect CMS priorities?

- Adopt CMS' oversight mindset in your plan
- Good policies and procedures are necessary – but not sufficient
- Need to measure how effectively these are working to generate compliant outcomes
- Gather performance data to identify problem areas and, after these are addressed, to confirm that problems are truly resolved
- Aim for real-time detection and correction

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Lead Cultural Change

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- MA and PDP – different environment and standards than commercial lines of business
- Counter any outdated perceptions of what is a “serious” problem
 - Ex. 200 out of 25,000 ANOCs arrive 5 days late
 - A serious violation in the Medicare world
 - It’s no excuse that you got 24,800 out on time
- Condition staff to prepare for quick turn-around times on issues identified by plan or CMS
 - Ex. Plan Surveillance Console – 3 business days to respond to secret shopper or website review deficiencies

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Compliance and Audit Departments Should Mirror CMS’ New Approach

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- **Measures to Track and Analyze**
 - Performance on key metrics from CMS Audit Guide
 - CTM complaints
 - Grievances and appeals
 - CMS-collected measures used for Medicare.gov star ratings
 - Performance metrics reported by CMS (ex. call center timeliness and other monitoring studies)
 - Compliance-Sensitive Part C & D Reporting Requirements data elements



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Compliance and Audit Departments Should Mirror CMS' New Approach

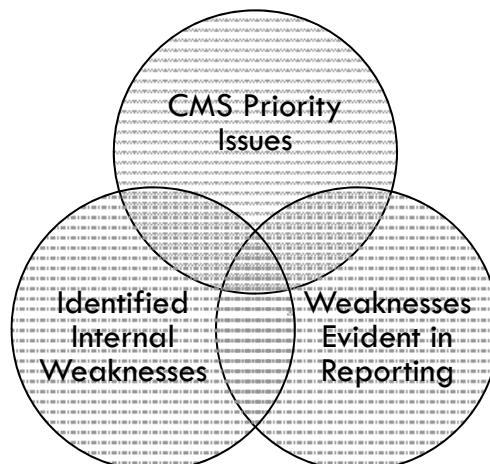
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- Compliance team should include staff proficient in quantitative data analysis
- Target Compliance Resources on Identified Risk Areas
 - Constant monitoring and auditing of compliance
 - Root cause analysis of problems
 - Prompt corrective action
- Measure results after action taken to confirm resolution
 - Require data showing fix was properly implemented
 - Proposed rule would place burden on plans under sanction to demonstrate corrections made, potentially through an independent audit, or a test period to see if performance has improved

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Prioritizing Resources

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Monitor Sales Agent Meetings

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- If feasible, cover every meeting in person or by phone with a plan employee
- At a minimum, monitor
 - Random sample of meetings
 - All meetings conducted by agents with previous complaints by members or violations identified by CMS secret shoppers
- Publicize monitoring program to agents

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Upcoming Data Validation Audit

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- CMS receives inquiries (from Congress, media, researchers, advocacy groups) for various data about MA and PDP plans
- Concern about data completeness, consistency, quality, and reliability
- Not a program audit
- Independent annual validation of data measures, elements, and systems and processes underlying the collection and reporting of data

Source: Tudor, C., "Measuring and Evaluating Plan Performance under the Medicare Advantage and Part D Programs," AHIP Medicare Conference, September 14, 2009

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Data Validation Audit

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- Announced in 2010 Call Letter
- In November 23, 2009 HPMS memo and Q&A
 - ▣ Postponed until spring 2011 for 2010 data
 - ▣ Focus on most critical data
- Proposed Data Validation Standards, Organizational Assessment Instrument, and Contractor Specifications released September 9, 2009, received extensive comments
- Will re-release for another round of comments (early 2010) and finalize in summer 2010

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Likely Measures for Data Validation Audit*

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Part C Measures

- Benefit Utilization
- Grievances
- Organizational Determinations/Reconsiderations

Part D Measures

- Grievances
- Coverage Determinations & Exceptions
- Appeals

*Based on September 9, 2009 data validation materials and updated to remove "suspended" measures in December 23, 2009 Reporting Requirements memo; expect more data to be included in audit.

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Potential Compliance Impact of Data Validation Audit

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- Plans must attest to meeting audit specifications and report results to CMS
- “No Pass” results –
 - Treated as a failure to submit required data, even if report was submitted timely
 - May be considered non-compliance resulting in corrective action plans and potential sanctions
 - Non-compliance with reporting requirements
 - Non-compliance with substantive requirements underlying data elements

Sources: CMS 2010 Combined Part C and D Call Letter, pp. 27-28; HPMS Memo and Q&A “Medicare Part C and Part D Reporting Requirements and Data Validation,” November 23, 2009

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What can you do now?

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Action Item

Begin to prepare for next spring's data validation audit by emphasizing data quality and assessing readiness.

- Review 2010 Call Letter discussion and Data Validation Audit materials distributed September 9, 2009 and November 23, 2009
- Emphasize the importance of accurate reporting for all business areas and follow Technical Specifications for gathering and reporting data
- Begin to evaluate reported data collection and verification processes, starting with elements expected in first audit

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CMS' Annual Performance Reviews

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- CMS will conduct an annual quantitative analysis of plan data on select performance dimensions to identify performance outliers
- Outliers targeted for audit and heightened oversight
- Performance Dimensions for 2009 released
- Focus on plans with problems in multiple measures or in especially high risk areas

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Conduct Corresponding Internal Performance Reviews

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- Evaluate plan business units and vendors to identify your “problem children”
- Replace uniform, periodic audit strategy with targeted internal audits
- Conduct performance evaluations to decide on resource allocation, internal audit schedule, and compliance measures to evaluate
- Avoid spending precious resources conducting in-depth internal audits on high performing departments

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Recommended Internal Performance Dimensions

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1. CMS Inquiry or Action

- Mirror focus of CMS concerns
- Confirm "fix" properly implemented

2. Star Rating Domains

- Where results can be traced to a department or vendor
- Ex. Customer Service, Care Management

3. CTM Complaints

- Track and trend complaints
- Look for patterns
- Investigate areas with high percentages

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Recommended Internal Performance Dimensions

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4. Compliance Related Metrics

- Each area should submit routine internal reports
- Ex. % timely decisions, notices, and effectuation

5. Open Compliance Issues

- Significant issues being worked internally
- Require more frequent reporting until effective "fix" is confirmed

6. Late Reports or Data Quality Problems

- Red flag for underlying issues
- Reporting for CMS and internal reporting

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Data-Driven Resource Allocation Is Worth the Effort

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- Requirements are voluminous and constantly expanding
- Easy to get bogged down in evaluating relatively low risk business units or requirements
- Invest resources up front in risk analysis to maximize the impact of your compliance staff's time and effort

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Proposed CMS Rule Requirements for Effective Compliance Programs

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Compliance Program Requirements

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- Proposal to “stress . . . robust compliance programs”
- October 22 proposed technical amendments
- OIG/GAO “heighten focus”
- Adopt & implement program
- Minimum requirements vs. “effective” program
- Address CMS program requirements

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Compliance Program Requirements

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- 1. Written Policies & Procedures
 - Implement compliance program;
 - Guidance on addressing compliance issues
 - Identify how to communicate compliance issues
 - Describe how issues investigated and resolved
 - Policy of non-intimidation, non-retaliation
 - Reporting and investigating issues
 - Self-evaluations, audits, remedial actions
 - Reporting to appropriate officials

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Compliance Program Requirements

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- 2. Compliance Officer, Committee
 - Report directly to CEO (or other senior Exec)
 - Officer & Committee periodic reports to Board
 - Board must:
 - Know content and operation of Program
 - Exercise reasonable oversight

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Compliance Program Requirements

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- 3. Training and Education
 - Training for key groups
 - CEO
 - Other senior administrators (or managers)
 - First tier & downstream entities
 - Medicare providers deemed to have training
 - Other vendors must receive training
 - Pharmacies & PBMs
 - Other vendors

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Compliance Program Requirements

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- 4. Effective Lines of Communication
 - Ensuring confidentiality
 - Anonymity
 - Accessibility
 - Communication channels to include:
 - Compliance officer/committee
 - Managers & Board
 - Employees
 - First tier & downstream entities

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Compliance Program Requirements

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- 5. Well-Publicized Disciplinary Guidelines
 - Encourage participation in Program
 - Articulate expectations for:
 - Reporting issues
 - Assisting in resolution
 - Policies to identify non-compliant/unethical conduct
 - Timely, consistent, effective enforcement

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Compliance Program Requirements

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- 6. Monitoring Compliance
 - Internal monitoring
 - Internal audits
 - External audits
 - “audits should include sponsor[‘s] first tier entities”

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Compliance Program Requirements

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- 7. Prompt Responses and CAPs
 - Establish & implement procedures and system
 - Prompt responses to compliance issues
 - Investigating compliance issues
 - Prompt and thorough responses to:
 - Reduce potential for recurrence
 - Ensure ongoing compliance

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