Ethical Compliance in LTC: Aligning Leadership and Regulatory Expectations

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Bureau of Survey and Certification
Joint Provider Surveyor Training
September 2026

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Disclosure Statement

I, or a member of my household, do not have a financial interest or arrangement that could be perceived as a real or apparent conflict of interest in the context of this presentation.

In addition, nothing in this presentation should be taken as official State of Michigan policy, guidance, or legal advice. Facilities should always consult with their respective general counsel and or compliance departments for current standards and expectations.

Objectives

1. Describe the federal regulatory requirements associated with F895 (Compliance and Ethics Program), and F946 (Compliance and Ethics Training).
2. Explain how these requirements support ethical organizational practices in long-term care.
3. Identify common compliance concerns within long-term care settings and discuss how these concerns may impact resident well-being, organizational integrity, and ethical decision-making.
4. Explain the steps survey staff may take when determining compliance or non-compliance with F895 and/or F946.
5. Analyze how these steps relate to accountability, transparency, and ethical standards in long-term care leadership.

Our agenda

- Part One
  - Why have a corporate compliance program?
- Part Two
  - Regulatory requirements for Conditions of Participation.
- Part Three
  - Examples of potential compliance concerns and what would lead a surveyor to start asking questions.

Knowledge Check #1



True or False?

A primary reason for having a compliance and ethics program is to detect fraud and abuse.

Part One: Why have a Compliance Program?

- Promotes a culture of ethical behavior and commitment to compliance with the law and regulations.
- Aids in preventing and detecting wrong-doing.
- Provides “safe” mechanisms for reporting and seeking help.
- Raises awareness of organizations expectations.
- Positive impact to company reputation/culture and public image.
- ***It’s required.***

How did we get here?

1970s

Bank Industry

1980s

Dept. of Defense

1990s

OIG and Healthcare Fraud focus

2000/2024

OIG NF Voluntary Guidance

2010

The Affordable Care Act

November 2019

Regulatory Requirements

Part Two: US Dept. of HHS – Office of Inspector General (OIG) Guidance and the 7 Elements

- Standards and Procedures, Code of Conduct.
- Oversight and Designation of a Compliance Officer/Committee.
- Effective Education and Training.
- Monitoring and Auditing.
- Communication and Reporting Systems.
- Enforcement and Discipline.
- Response and Prevention.

CMS and Regulatory Requirements: F895

483.85(c) The operating organization for each facility must develop, implement, and maintain an effective compliance and ethics program that contains, at a minimum, the following components:

1. Written standards, policies, and procedures capable of reducing the prospect of criminal, civil, and administrative violations, and that promote quality of care.
2. Assignment of individual(s) with high-level authority to oversee the program.
3. Sufficient resources and authority.
4. Due care not to delegate responsibility to an individual who may engage in criminal, civil, or administrative violations.
5. Effectively communicate standards, policies, and procedures.
6. Continuous auditing and monitoring; development of a reporting system.
7. Consistent enforcement, disciplinary action for violations.
8. Response to actual violations and steps to prevent further violations.

But wait, there's more!

For organizations with more than 5 facilities:

9. Mandatory annual training program on the facility's compliance program.
10. A designated compliance officer who reports directly to the governing body.
11. A designated compliance liaison located at each of the organization's facilities.

And finally…

12. Annual review of the compliance and ethics program by the operating organization for each facility; make revisions as necessary.

F946: Compliance and Ethics Training

- Training is required for:
  - Staff – new and existing, direct and indirect care functions.
  - Vendors/Contractors/individuals providing a service.
  - Volunteers.

Training is completed upon hire/start of contract, and yearly.

Training is comprised of communication of standards, policies, procedures of the compliance and ethics program.

There should be a process in place to track participation/completion of the training.

Knowledge Check #2

True or False?

If an entity owns/operates more than five facilities, each location must have a designated compliance liaison.

Knowledge Check #3

Examples of how entities can effectively communicate compliance and ethics program standards, policies, and procedures include (check all that apply):

A. Distribution of a Code of Conduct.

B. Training and in-services, newsletters.

C. Meeting after work for drinks and apps.

Part Three: Potential Concerns/Examples

Accepting free goods and services.

Contractor/Vendor contracts that are missing important legal information.

Stark Law violations (physician self-referrals who have a financial interest in the company).

Employment or contract with individuals on the "List of Excluded Individuals and Entities" (LEIE) provided by the OIG.

HIPAA and security breaches.

Quality Care concerns such as medication management, resident safety, sufficient staffing, etc.

False Claims (submitting incorrect or fraudulent information for billing and reimbursement).

Fraud & Abuse issues: medical identity theft, billing for services not rendered, upcoding, unbundling, billing for noncovered services, etc.

What would lead a surveyor to start asking questions?

Scenario One:

During the Binding Arbitration Agreement review, it is identified that staff members are signing the agreement without the resident's consent.

What would lead a surveyor to start asking questions?

Scenario Two:

A review of facility training records reveal that the entity does not conduct training on its compliance and ethics program.

What would lead a surveyor to start asking questions?

Scenario Three:

Multiple system failures are identified during a recertification survey, such as no CDM in the kitchen, safety and accident concerns throughout the physical building, multiple interim NHA's over one year, and numerous breaks in infection control and prevention practices. There is no Compliance Hotline number posted.

Bonus: What happens if I’m cited?

Plan of Correction.

Possible referral to AG and or OIG or other government agency with authority.

Refer to Federal Sentencing Guidelines – fines, prison, Corporate Integrity Agreement (CIA), license suspension/revocation, negative press, increased government scrutiny/involvement, etc.

Knowledge Check #4

Examples of compliance concerns include (check all that apply):

A. Fraudulent billing practices.
B. Incorrect documentation.
C. Accepting bribes and/or kickbacks.
D. Not following HIPAA and Privacy laws.
E. All of the above.

Knowledge Check #5

A determination of non-compliance may be made if a surveyor identifies during survey (check all that apply):

A. The facility has not adopted/implemented a corporate compliance plan.

B. The facility lacks a system for reporting suspected compliance issues without retaliation.

C. The facility has not identified a corporate compliance liaison (5 or more buildings).

References

- State Operations Manual, Centers for Medicare and Medicaid Services, Appendix PP, 2025. https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/downloads/som107ap_pp_guidelines_ltcf.pdf.

- Nursing Facility Industry Segment-Specific Compliance Program Guidance. U.S Department of Health and Human Services Office of Inspector General. (2024, November). https://oig.hhs.gov/compliance/nursing-facility-icpg/.

- Brinson, S. G., Clack, L., Gill, L. M., & Gosa, L. K. (2021). Overview of Healthcare Compliance. University of North Georgia Press.


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