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TAANA
Annual Meeting
August 4, 2017

Don't Get Caught with Your Compliance
Pants Down: Compliance Effectiveness
and Role of Counsel

Don't Get Caught with Your Compliance Pants Down:
Compliance Effectiveness and Role of Counsel

Rose M. Matricciani, Partner
Whiteford, Taylor & Preston L.L.P.
7 St. Paul Street
Baltimore, MD 21202
T: 410-347-9476
F: 410-234-2355
rmatricciani@wtplaw.com

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Don't Get Caught with Your Compliance Pants Down:
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- * Double-Edged Sword
- * Penalties and Fines

- * Corporate Integrity Agreements

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- * **Corporate Integrity Agreements (CIAs):**
 - * Negotiated by OIG with health care providers and other entities;
 - * Part of the settlement of Federal health care program investigations;
 - * Arises out of civil false claims statutes;
 - * Entities agree to obligations in exchange for OIG not seeking their exclusion; and
 - * Generally, three to five years with reporting obligations.

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- * **Current Trends:**
 - * Missing Compliance Officer, effective policies and procedures, Compliance Committee and training of staff. (5 years)
 - * Need tracking system for contracts to comply with anti-referral laws.
 - * Required to have Independent Review Organization to review contracts.
- Mercy Hospital Springfield and its Affiliates 5/2/17

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- * **Current Trends:**
 - * Need effective Compliance Officer (can't report to General Counsel or CFO);
 - * Need Compliance Officer to be responsible for effective policies;
 - * Need Compliance Committee;
 - * Requires training and use of an IRO;
 - * Requires yearly risk assessment and audits;

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- * **Current Trends (continued):**
 - * Requires annual reporting; (5 years);
 - * Requires checking for exclusions;
 - * Requires Executive Management oversight; and
 - * Requires Disclosure Program.

- * MedStar Ambulance & EMS programs 1/12/17

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- * **Current Trends:**
 - * Requires Compliance Officer to report to CEO;
 - * Requires appointment of Compliance Committee;
 - * Requires training and oversight of various areas;
 - * Must have written policies and procedures and update annually, as applicable;
 - * Must hire IRO for independent review of claims for medical necessity;

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- * **Current Trends (continued):**
 - * Must conduct risk assessment;
 - * Must have Disclosure Program;
 - * Must review Exclusion List;
 - * Must file annual reports (5 years; and
 - * Must report overpayments.

Family Care Visiting Nurse and Home Health Agency, LLC,
Rita C. Krett, RN, BSN and David A. Krett

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- * Responding to an Investigation
 - * Assemble the team:
 - * Attorneys, investigators, experts, corporate personnel
 - * Roles of team members
 - * Attorneys – preserve privilege; evaluate facts; evaluate liabilities and defenses; and represent client in best possible light.
 - * Investigators – evaluate facts in particular area of expertise (coding expert, medical expert, accountant).

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- * Roles of team members
 - * Corporate Personnel – have knowledge of operations and facts; can ensure cooperation; can ensure production of documents; and can ensure compliance.
 - * Search Warrants
 - * Have protocol for responding;
 - * Preserve all documents;
 - * Negotiate response period; and
 - * Negotiate scope of subpoena.

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- * Documents
 - * Review of documents by counsel;
 - * Catalogue documents;
 - * Produce responsive documents; and
 - * Recognize ongoing obligation to produce documents

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* Employee Interviews

- * Create guidelines for employees:
 - * Investigators come to home – employee should ask for identification; telephone investigator's office to verify identity if possible; determine why investigator there; try to set up appointment for interview; and notify employer/counsel and provide him with all information.

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* Employee Interviews

- * Create guidelines for employees:
 - * If employee is intimidated into speaking with agent at that time, employee should:
 - * Have someone present to take notes (employee's right);
 - * Tell the truth;
 - * Only answer the question asked and do not volunteer information; and
 - * Contact supervisor/counsel as soon as possible if not able to do so before interview.

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* Informing Employees:

- * Explain about investigation;
- * Explain outside counsel will be conducting employee interview;
- * Explain counsel is interviewing to fully understand operations and activities; and
- * Inform employees not to discuss interview with anyone except counsel.

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* Tips for Counsel Interviewing Employees:

- * Inform employee counsel represents the company;
- * Inform employee that the information possessed by the employee and revealed to the client is protected by attorney-client privilege that belongs exclusively to the corporation;
- * Inform the employee that the privilege can be waived by the corporation; and
- * Conduct the interviews with two attorneys.

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- * Discussion
- * Question and Answer

* Helpful Resources:

- * oig.hhs.gov/compliance
- * Health Care Fraud and Abuse Compliance Manual
Christina W. Fleps, J.D., M.B.A. (Walters Kluwer) 2017
