

Submitted electronically through www.Regulations.gov

November 16, 2010

Centers for Medicare & Medicaid Services
Department of Health and Human Services
Attn: CMS-6028-P
P.O. Box 8020
Baltimore, MD 21244-8020

RE: Medicare, Medicaid, and Children's Health Insurance Programs; Additional Screening Requirements, Application Fees, Temporary Enrollment Moratoria, Payment Suspensions and Compliance Plans for Providers and Suppliers. CMS-6028-P

To Whom It May Concern:

Thank you for this opportunity to submit comments to the Centers for Medicare and Medicaid Services ("CMS") on the Proposed Rule (CMS-6028-P) implementing provisions of the Affordable Care Act ("ACA") which would establish screening procedures for providers in the Medicare, Medicaid and CHIP programs as well as a request for comments on the ACA provisions related to the establishment of Compliance Programs.

The National Council, a non-profit association representing over 1,700 community-based mental health and addiction providers, is dedicated to fostering clinical and operational innovation and promoting policies that ensure the more than 8 million low-income children, adults, and families our members serve have access to high quality services. Our community mental health and addiction organizations have more than 40 years of experience and expertise in providing a range of clinic-based services and recovery supports for millions of individuals with multiple chronic health problems. Many of our organizations have compliance programs and as such are interested in the upcoming regulations that will be used to establish compliance programs.

Compliance Programs

We solicited information from our members, in response to your request for information concerning compliance programs elements and how CMS can establish these elements to ensure that Medicare, Medicaid, and CHIP are protected from fraud and abuse. Compliance programs are an important facet of community-based mental health and addictions organizations. Approximately 88% of our member organizations employ the use of a designated

compliance officer. These officers are responsible for all facets of the compliance programs such as: monitoring databases to ensure that providers remain eligible, auditing the agency for prohibited conduct, providing training for employees to maintain compliance and developing systems for employees to report unethical behavior without fear of retribution. The use of the seven elements of an effective compliance and ethics program were repeatedly mentioned by our members as being the basis for their systems of compliance. The National Council recognizes the value of robust compliance programs and training for employees of our member organizations. Therefore, we would like to provide some information regarding the establishment of compliance program elements.

Considerations for Developing Regulations for Compliance Programs:

- **Flexibility:** Regulations should not be overly burdensome and should be representative of the size of the organization. A smaller organization will have fewer staff and financial resources available to undertake some aspects of compliance that may be more appropriate for larger agencies. Additional variance needs to be made to incorporate the limitations placed on providers in rural and/or frontier regions of the country as opposed to the large metropolitan communities where resources, both human and capital, are more readily available.
- **Criteria for Grouping Providers:** Suggestions for possible categories.
 - Determined by risk of fraud
 - Determined by level of care provided: outpatient, residential, acute
 - Determined by type of provider: CMHCs, Substance Use Treatment Facilities, Acute Hospitals, etc.
 - Determined by annual budget size
- **Third-Party Resources:** The size of the organization is generally a factor in the use of outside resources. Larger organizations may employ the services of outside consultants and trainers to provide related services to the organizations and staff. However, smaller organizations do not use third-party resources because they may not have the financial resources to do so.
- **Identification of Compliance Staff:** There are several different variations of people appointed to be in charge of their respective agencies compliance plans. The designation of staff is often dependent upon the financial wherewithal of the organization. Agencies reported the use of part-time and full-time staff working on their compliance programs.

- **Cost and Benefit of Compliance Programs:** The costs of setting up a compliance program can be overwhelming for smaller agencies which may have limited administrative staff to provide the support necessary. Estimated costs for setting up a compliance program range from \$60,000 to \$130,000. This does not include potential salaries and indirect costs associated with compliance activities. However, the benefits to those agencies that have compliance programs are significant. A properly implemented compliance program will provide protection to community mental health and addictions organizations from fraud and abuse in the Medicaid, Medicare and CHIP markets.
- **Use of the Seven Elements as Basis for Compliance Programs:** These elements are taken from the federal sentencing guidelines, specifically the chapter on Sentencing of Organizations. This chapter applies when a convicted defendant is an organization. The language in the Introductory Commentary reads “These guidelines offer incentives to organizations to reduce and ultimately eliminate criminal conduct”. The presupposition is that organizations are engaged in criminal activity that creates a negative atmosphere and a culture of fear.

Recommendations Regarding Compliance Programs and Screening Procedures for Providers:

Compliance Programs

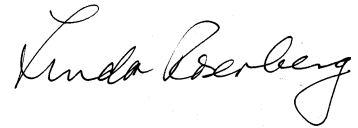
- **Consider the size** of the agencies and organizations when drafting the regulations regarding the required components of compliance programs. Everyone should be required to maintain compliance, but there should be flexibility in implementation.
- **Provide federal assistance** in order to help offset the costs for many of these agencies that may be setting up more comprehensive or initial compliance programs.
- **Continue to provide, update and make easily accessible** the information available through the CMS and OIG websites to provide support and guidance to organizations that are developing and maintaining compliance programs.
- **Reconsider placement of the seven elements.** Where they are currently found in the Sentencing Guidelines inadvertently perpetuates the idea of criminalizing providers. We would suggest that a more appropriate place for these guidelines would be in a compliance specific document developed by CMS or OIG.
- **Develop a national network of compliance programs** to enable compliance officers to engage with each other regarding aspects of their compliance programs that were successful. Encouraging communication amongst compliance officers will facilitate more active engagement and would be beneficial during the initial states of developing compliance programs to ensure that programs are implemented correctly and are in compliance with the requirements of ACA.

Screening Procedures for Providers

- **CMHCs as “limited” risk providers:** The inclusion of CMHCs in the “moderate” risk group seems appropriate given the history of fraud in “for profit” CMHCs; however, we would like to suggest that in the future, “not for profit” CMHCs be considered for status as a “limited” risk group.

The National Council believes the establishment of compliance program requirements as well as screening procedures for Medicare will be beneficial to our members and help facilitate a reduction in fraud and abuse in the Medicare system. We appreciate the opportunity to comment on their planning and establishment in advance of more specific proposals. Thank you for your consideration of our comments.

Sincerely,



Linda Rosenberg
President/CEO