

## Compliance 2018: Where are we at?

Mandatory or *Mandatory*?

Or both?

ACHCA

April 2018

Tom Ealey

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## Mandatory Compliance

### Disclosure of Commercial Interests

Employment:

**Alma College** (Michigan) – professor of accounting and health care administration

**Ealey Publishing Inc.** – managing editor, no current project relevant to this program

**Ealey Group, LLC** – managing consultant, no current projects relevant to this program

From time to time in the future I may work on consulting or commercial publishing projects involving long-term care.

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## Mandatory Compliance

Tom Ealey has four decades of experience with long-term care as an accountant, consultant, writer, researcher and seminar leader. He is an ACHCA faculty member and has served the ACHCA since the 1980s. He writes frequently for the Health Care Compliance Association.

Tom is a professor of business administration at Alma College in Alma Michigan. He advises and lectures in the College's Integrated Health Studies Institute.

A hard copy handout will be provided, courtesy of Alma College. Free materials can be found at a Dropbox.com Long-term Care Share, link at <https://healthcarethinktank.blogspot.com>

Contact: [Ealey@alma.edu](mailto:Ealey@alma.edu)

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### Mandatory Compliance

Feel free to ask questions, if I can I will answer them, if not I will try after the program, and you can always follow up via email.

Big **thank you** to the ACHCA staff.

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### Mandatory Compliance

Compliance programs used to be "recommended"

*although*

many of us thought recommended meant "required"

*Anyone know where the compliance idea came from?*

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### Mandatory Compliance

Then came

**PPACA**

Aka "ACA" or "Obamacare"

(seems like eons ago?)

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**Mandatory Compliance**

The Patient Protection and Affordable Care Act (Public Law 111-148) as supplemented by the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152), often referred to as "PPACA" or "ACA"

Long-term care rules can be found at P. L. 111-148 Subtitle B, Nursing Home Transparency and Improvement, Part I, Section 6102

[As of this writing this has Not been repealed and is still in effect. Thanks to Robert Wade of Barnes Thornberg (attorneys) in South Bend Indiana for backup research.]

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**Mandatory Compliance**

As of March 23, 2013

Compliance programs are

**REQUIRED**

Except.....

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**Mandatory Compliance**

The are no new regulations

*however*

there is plenty of guidance available

Where did we start?

The 2008 OIG guidance statement

[http://oig.hhs.gov/compliance/compliance-guidance/docs/complianceguidance/nhg\\_fr.pdf](http://oig.hhs.gov/compliance/compliance-guidance/docs/complianceguidance/nhg_fr.pdf)

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### Mandatory Compliance

Other resources  
 Your (health care specialist) lawyer  
 Trade and professional associations including ACHCA  
 Health Care Compliance Association  
 Trade publications  
 Newsletters, websites

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### Mandatory Compliance

The new regulations on conditions of participation arrived

*Medicare and Medicaid Programs;*

*Reform of Requirements for Long-Term Care Facilities*

Federal Register / Vol. 81, No. 192 / Tuesday, October 4, 2016

*Nothing really shocking here.....*

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### Mandatory Compliance

The Long-term care difference is becoming more common

Not just billing integrity, but

*Quality of care interacting with billing*

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**Mandatory Compliance**

So what are the feds looking for?

According to the OIG.....

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**Mandatory Compliance**

Sufficient staffing

Comprehensive resident care plans

Medication management

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**Mandatory Compliance**

Psychotropic med utilization

Safety: mistreatment, neglect, abuse

Billing Integrity

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**Mandatory Compliance**

Anti-kickback regulations

(Illegal) supplementation

..... enough?

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**Mandatory Compliance**

Legal news:

Sally Yates became famous when President Trump

fired her from DOJ for insubordination.

Before that, she became famous for the 2015 “YATES MEMO”

**Yates memo = white collar criminals should go to prison**

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**Mandatory Compliance**

Why we should be very, very careful

Momence Meadows Nursing Center

U.S. ex rel. Absher v. Momence Meadows Nursing Center, 2:2004-cv-002289 (Aug. 20, 2014)

False claims gone wild!

Or maybe not..... (provider won on appeal)

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### Mandatory Compliance

#### Recent and current litigation

Whistleblowers and the feds versus just about everybody!

Unnecessary and unreasonable amounts of therapy done to  
residents who did not need it, then billed to the feds

Massive settlements and of course legal fees

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### Mandatory Compliance

In the news.....

The Extencicare Settlement

Handout: we will look at the Corp Integrity Agreement

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### Mandatory Compliance

And then we go back to the roaring 90s

therapy rears its' ugly head

Kindred Care (and affiliates) settled for big dollars

Genesis settled for big dollars

Repeat after me....

**"reasonable and necessary"**

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**Mandatory Compliance**

Litigation is pending with

SavaSeniorCare LLC

(last fall Sava was thumped in an appeal trying to redefine the issues)

There is some hope on technical appeal grounds but do not use that as a rationale.

Repeat after me....

**"reasonable and necessary"**

HCR Manorcare won their case, on the way to bankruptcy

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**Mandatory Compliance**

RUG fudging is a good way to get a beating

email is a government lawyer's best friend

bonuses based on RUG fudging and minute stuffing – no no

corporate created "budget" (quota) numbers can be dangerous

HPL is not a solely adequate defense

Documentation must establish **"reasonable and necessary"**

**which employee is your future whistleblower?**

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**Mandatory Compliance**

CMS

2016/2017 Nursing Home Action Plan

Four Main Goals

Better care and lower costs

Prevention and population health

Expanded health care coverage

Enterprise excellence

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**Mandatory Compliance**

CMS

2016/2017 Nursing Home Action Plan

Our favorite reading

<https://www.cms.gov/Medicare/Provider-Enrollment-and-Certification/GuidanceforLawsAndRegulations/Nursing-Homes.html>

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**Mandatory Compliance**

CMS - five principles of action

enhance consumer awareness

strengthen survey process, standards, training

improve enforcement activities

promote quality improvement

create strategic approaches through partnerships

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**Mandatory Compliance**

The news is not all bad....

Compliance can improve performance

Compliance can improve the revenue cycle

You are likely already doing much of the work anyway!

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**Mandatory Compliance**

**Consider the benefits**

- improved billing cycle performance
- develop training needs list
- evaluate technology assets
- extra review POC and follow through
- one more look at medical records

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**Mandatory Compliance**

The 2008 guidance statement is a well written outline of the CMS-OIG expectations and focus

[https://oig.hhs.gov/fraud/docs/complianceguidance/nhg\\_fr.pdf](https://oig.hhs.gov/fraud/docs/complianceguidance/nhg_fr.pdf)

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**Mandatory Compliance**

I. INTRODUCTION

Benefits and applications

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**Mandatory Compliance**

II. Reimbursement overview

Medicare and Medicaid

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**Mandatory Compliance**

III. Fraud and abuse risk areas

Quality

Accurate claims

Anti-Kickback

Other risk areas

HIPAA

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**Mandatory Compliance**

IV. Other compliance considerations

Ethics

Program review

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### Mandatory Compliance

V. Self reporting

updated since 2008

This is "call your lawyer" material

[https://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/downloads/6409\\_srdp\\_protocol.pdf](https://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/downloads/6409_srdp_protocol.pdf)

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### Mandatory Compliance

So let's look at the basics

Program design

Program review

Program operations

Training and orientation

Non-employees and the program

Love your lawyer

Stay informed

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### Mandatory Compliance

Again, handouts and additional (free) materials are available at a Dropbox link. Links to some of my recent journal publications are included in the share site.

Find the link at <https://healthcarethinktank.blogspot.com>

Or email: [Ealey@alma.edu](mailto:Ealey@alma.edu)

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Mandatory Compliance

THANK YOU!

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