

# Compliance:



We are pleased to welcome Latour "LT" Lafferty as a guest contributor. The son of two physicians, LT is certified by the Health Care Compliance Association in Healthcare Corporate Compliance (CHC) and is a former ten (10) year civil and criminal federal prosecutor who served in the Office of Counsel to the President George W. Bush and Office of the Independent Counsel (Whitewater). You can learn more about LT at <http://www.fowlerwhite.com>

The concept of "preventive medicine" encompasses the ideal of proactive, rather than reactive, medical treatment. Similar to this concept, that preventive medicine can go a long way to ensuring the long-term health of your body, preventive compliance efforts can ensure the long-term economic success of your practice. Compliance with the myriad federal and state health care regulatory statutes is not only required (by the law) but also a valuable business practice. Compliance can protect you from costly government contractor and

law enforcement inquires as well as increase the overall effectiveness and efficiency of your practice. This "value" based compliance principle is premised upon a desire for a culture of excellence in your practice, one that aspires to provide quality medical care through conforming to a standard of excellence (through compliance) in your practice. Setting such a high standard ultimately attains a superior level of quality care.

The practice of preventive medicine as a medical specialty focuses on disease prevention. This medical concept of proactive,

preventive care can easily be analogized with health care regulatory compliance enforcement. Governmental enforcement efforts, whether through contractors, law enforcement agencies, or whistleblowers creates a "curative" response from health care providers that is both costly and most typically, very ineffective. Health care compliance program efforts, on the other hand, are preventive in nature because they are designed to proactively prevent "disease" (i.e., regulatory non-compliance) in your practice through the specialized

# Preventive Medicine For The Health Of Your Practice

treatment of your practice's regulatory compliance environment.

Health Care compliance is founded in the theory of organizational behavior and corporate responsibility, although it applies equally both to large medical institutions (e.g., hospitals) and individual physician practices. The United States Sentencing Guidelines Commission, which promulgates the Sentencing Guidelines governing federal criminal offenses, originally propounded the concept that a compliance program could mitigate criminal conduct. This concept has since expanded to the principle that effective compliance efforts demonstrate your commitment to legal and ethical conduct and hence, negate evidence of fraudulent intent. Physicians who choose to make compliance an essential part of their practice are proactively defending against, and deterring, allegations of fraud, abuse, and waste by providing evidence that their practice intended to operate in compliance with applicable laws. More importantly, however, you will enjoy the public's trust, operate with visible integrity, and thus avoid unnecessary and costly employee complaints (e.g., whistleblower actions). More importantly, you will enjoy long term economic success as the result of a culture of excellence through compliance. Why is this important? Because Congress in 1996 created the Health Care Fraud and Abuse Program when it enacted the Health Insurance Portability and Accountability Act (HIPAA), requiring the United States Department of Justice (DOJ) and the United States Department of Health and Human Services, Office of Inspector General (HHS-OIG) to create a national Health Care Fraud & Abuse Program. This highly coordinated national law enforcement effort is intended to ensure the integrity of federally subsidized health care benefits. This effort includes the

focused development and funding of health care prosecutors and investigators coordinated on a federal, state, and local level for the purpose of enforcing a myriad of health care laws and regulations. In addition, this effort encompasses a full range of remedial measures including administrative, civil, and criminal sanctions.

The Health Care Fraud & Abuse Program is designed to extract the fullest possible remedial measures from unscrupulous health care offenders. To accomplish this goal, the DOJ has created Affirmative Civil Enforcement (ACE) units within its local United States Attorney's Offices. These ACE units are staffed with attorneys, auditors, and paralegals tasked with the responsibility of initiating lawsuits to enforce federal laws, particularly health care fraud and abuse laws. Quite simply, health care fraud is a major focus of the federal government's ACE activities and the FCA authorizes whistleblowers, or "relators," to file lawsuits on behalf of the United States against unsuspecting health care providers alleged to be committing fraud. Most notably, however, the United States Attorney for the Southern District of Florida and the Florida Attorney General recently announced at a joint press conference their intent to more aggressively crack down on small health care providers accused of committing fraud citing South Florida as "ground zero" for the Nation's health care fraud.

As you can see, the virtue of preventive compliance can dramatically benefit your practice. There is an old adage that says "the best offense is a good defense." What preventive efforts are you taking to ensure that your practice is compliant? Today's health care industry is confounded with many problems the least of which is the ever-compounding and more complex federal

and state regulations of your practice. Yet Socrates said "All the problems in the world can be solved, if people would just stop and think." As a health care provider you don't have to solve these problems on your own, but you do have to choose to take action, to take responsibility for the continued success of your practice by being proactive rather than reactive. Competent legal counsel, one that is both knowledgeable and experienced in regulatory compliance matters, can assist providers in ensuring corporate compliance through timely advice, the implementation of compliance programs, and conducting both proactive and reactive internal investigations and audits, as well as defending those accused of unscrupulous activities. In essence, competent legal counsel can assist providers in avoiding, investigating, and defending allegations of fraud, abuse, and waste through the use of effective compliance programs. In the end, value based decisions are better than profit based decisions because they ensure to the long term economic success of your practice through a culture of excellence. Preventive compliance, like the concept of preventive medicine, embraces this concept. A focus on compliance in your practice, through the assistance of competent legal counsel, now that is preventive medicine! Latour "LT" Lafferty Certified Health Care Compliance (CHC) Fowler White Boggs Banker P.A. 501 East Kennedy Blvd., Suite 1700 Tampa, Florida 33602 813.222.1106 (Direct) 813.228.7411 (Switchboard) 813.229.8313 (Fax)