

Compliance Today – February 2019

Providers and the opioid crisis: Compliance officers need to be aware

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On October 24, 2018, the President signed into law the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act (the SUPPORT for Patients and Communities Act, or the Act), a comprehensive law that requires efforts across federal agencies to mitigate the opioid epidemic. The Act is another recent government action among many laws, regulations, policies, and enforcement actions taken to curb the national epidemic. The opioid epidemic has touched and devastated nearly every community in the U.S., with 46 people dying every day from prescription opioid-involved overdoses in 2016.^[1] Healthcare compliance officers and committees should be particularly aware, because the agencies that regulate the healthcare space have focused heavily on the opioid epidemic over the last few years, with consistently increasing efforts to reduce its effects. Compliance officers should be aware of government agency efforts and enforcement initiatives and work with their operational departments to ensure that oversight and proper controls are in place within their facilities to deter inappropriate overprescribing, drug diversion, and potential risks to patients.

The SUPPORT for Patients and Communities Act

The Act is the most comprehensive law to address the opioid crisis since the passage of the 21st Century Cures Act and the Comprehensive Addiction and Recovery Act in 2016.^[2] The Act includes a variety of new utilization controls, prescription reviews, and data analytics and monitoring provisions to help prevent unnecessary prescribing and opioid diversion, and increase access to alternative pain management and opioid use disorder (OUD) treatments. Additionally, it instructs the Department of Health and Human Services (HHS) to implement new requirements for services such as Medication-Assisted Treatment (MAT), pre-authorization, and e-prescribing of opioids for Medicare Part D providers.^[3]

Many of the new provisions are meant to lower barriers to treatment and prevent future overprescribing and drug diversion. The government uses strong monitoring and enforcement tools to achieve these goals, which in turn require healthcare organizations to be aware of changes to billing procedures, payment coverage, monitoring requirements, and enforcement trends.

Beyond the components of the Act that touch on greater access to treatment, alternative pain management methods, and reconstruction of payment mechanisms to make treatment and recovery more accessible, the Act also contains increased fraud and abuse enforcement tools. The Act created the Eliminating Kickbacks in Recovery Act (EKRA), a criminal statute separate from other federal and state anti-kickback statutes, which makes it illegal for providers paid by either federal healthcare programs or private insurers to solicit, receive,

induce, or offer to pay remuneration in return for referring patients to a recovery home, clinical treatment facility, or laboratory.^[4]

A provider that takes part in a transaction that triggers EKRA, and where the transaction does not fall under one of the statutory exceptions, could face up to \$200,000 in fines or up to 10 years in prison, or both. In addition, the Act creates enforcement mechanisms intended to remove incentives to use opioids over evidence-based, non-opioid alternatives for outpatient facilities and ambulatory surgical centers.^[5]

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