

Legal Issues in Managed Care

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Richard F. Topping
General Counsel

Government Services...

not

...*Healthcare* Services

Legal Profile

- **Low Risk**
 - **Causes of Action**
 - **Litigation Costs**
 - **Damages**
- **Ready Compliance**
 - **122C**
 - **NC Administrative Code**

Business Transactions

- Contracts Management
- Independent Contractors
- Vendors
- Third-Party Payors
- Network Leases
- Network Providers
- Education Affiliations
- Clinician Recruitment
- Asset Purchases
- Staffing Agreements
- HIPAA – Business Associate Agreements
- Contract Management
- E-Commerce
- Litigation
- Information Use Agreements
- HIPAA – Transactions
- HIPAA – Broker/Agent/Agency Agreements
- Agreements with Self-Funded Groups
- TPA Agreements
- DOI Contracting Laws/ Regs
- Consulting Contracts
- Research Contracts
- Equipment Leases
- Joint Ventures
- Indemnifications
- Contracting Authority

Employment & Benefits

- Policies and Procedures
- Investigations and administrative hearings
- Pension Plans
- Employment and contractor agreements
- Employee Criminal Conduct
- Title VII
- Subrogation
- Contracts/Policy
- Litigation/Investigations
- Employment/Independent Contractor Agreement
- Child Care
- Inappropriate Employee Conduct
- Excluded/Sanctioned Providers/ Employees
- Employee/Provider Background Checks
- Bureau of Citizenship and Immigration Services (formerly INS)
- COBRA
- Arrangements with brokers, agents, and agencies
- Termination/ Policy
- Enrollment and Group/ Member Termination
- Grievance and Appeals Processes
- EEOC
- DOL
- Fair Labor Standards Act
- Wage & Hour, Payroll and Garnishment Issues
- Americans with Disabilities Act
- Section 504 of Rehab Act of 1973
- Family Medical Leave Act
- Age Discrimination in Employment Act
- Affirmative Action Program
- Policies & Procedures Development/ Enforcement

Medicaid & Plan Provisions

- Social Security Act, Amendments and Regulations, Titles 18 and 19
- Stark
- Anti-kickback
- False Claims Act
- Claims Submission
- Provider Enrollment/Renewal, Provider Agreements
- External Audits/Surveys
- Conditions of Participation
- Certification
- Admitting, discharge and transfer issues
- Quality Assurance and Reporting
- Clinical Protocols
- EMS Issues
- EMTALA
- FDA/Blood Banks
- HIPAA
- IRBs
- Medical Records
- Behavioral Health Specific Issues
- Litigation

...and so much more!

- Corporate Compliance and Governance
- Real Property and Environmental
- Financial and Accounting
- Policy and Legislation
- Intellectual Property
- Contracting
- Insurance
- Litigation
- etc.

Legal Profile

- High Risk
 - “At Risk”
 - At Risk for the “At Risk”
- Undefined Compliance
 - No Defined Structure or Regulatory Scheme for Public MBHOs in North Carolina

Compliance

- ALL Apply ALL the Time to EVERY Action:
 - Federal law, Federal regulations
 - State Law, State Regulations
 - Contract Requirements
 - Plan (Waiver) Provisions
 - Case Law
 - Entitlement, Unique to Medicaid Plans
 - Behavioral Health Sector Specifics



Risk Management and Compliance Plan...

- ✓ Strive to provide safe delivery of quality healthcare within reasonable financial/ resource limits.
- ✓ Provide measures that make all feasible assurances of well being and safety for our consumers, families/significant others, employees, clinical staff, and stakeholders.
- ✓ Strive to ensure the safety and integrity of organizational property and physical plant.
- ✓ Protect financial assets and human resources.
- ✓ Ensure a level of care which, at the minimum, meets national, accrediting, and regulatory standards.
- ✓ Emphasize a proactive approach to the improvement of the ongoing delivery of care, and five-star level service and communications throughout the organization.

...more Plan

- ✓ Maintain effective consumer and family communication on care to enhance satisfaction and confidence.
- ✓ Meet insurance, accrediting and regulatory requirements through open communication and reporting mechanisms.
- ✓ Integrate the outcomes of the performance improvement, utilization management, clinical risk management, safety, financial planning, human resources, consumer care monitoring, medical credentialing, consumer satisfaction, and accrediting and regulatory programs to identify issues with potential risk and organizational liability.
- ✓ Facilitate the timely identification and resolution of risks in an effort to reduce or prevent the potential of injuries or losses.
- ✓ Decrease the severity of loss exposure from potentially compensable events through proactive event management.

CEO & Area Director

- The Chief Executive Officer and/or Area Director assumes oversight responsibilities related to the plan including supporting the it, active involvement in making appropriate decisions in order to reduce or minimize risk and liability, and coordination between the plan and the Board.
- Usually on advice and with the assistance of counsel.

Executive Team & Supervisors

- Ensure that rules and policies are followed and/or updated or modified as operational conditions require. Executives and supervisors should be role models.
- Ensure that all incidents are reported and investigated in a timely fashion and support a non-punitive reporting culture to encourage self-admission of errors and near misses.



Medicaid Service Decisions

- Denial, Reduction, Suspension, or Termination of Service
- “Fair Hearing” Requirements
- Office of Administrative Hearings
- Administrative Law Judges
- MBHO decision, ALJ Recommendation, Final Agency Decision...Superior Court



- **Provider Related Disputes**
 - **Varies**
 - **Statutes, NC Administrative Code, Contracts**
- **Plan Design, Benefits Package, Operations**
 - **U.S. District Court**
 - **State Superior Court**
- **HR, Real Estate, Juvenile Proceedings, Guardianships, etc.**



Questions?



And how do you feel about that?