

2024 RURAL HEALTH WORKSHOP

TRANSFORMING YOUR CODE OF CONDUCT INTO AN EFFECTIVE COMPLIANCE TOOL

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**the Health
Law Center**

Sullivan Stoler Schulze

DISCUSSION OVERVIEW

POINTS TO COVER

- Healthcare Regulatory Environment
- Fraud and Abuse Enforcement
- Code of Conduct - Culture of Compliance
- Office of Inspector General Guidance
- The Mix between Principles and Practical
- Reinforcement Through Frequent Contact



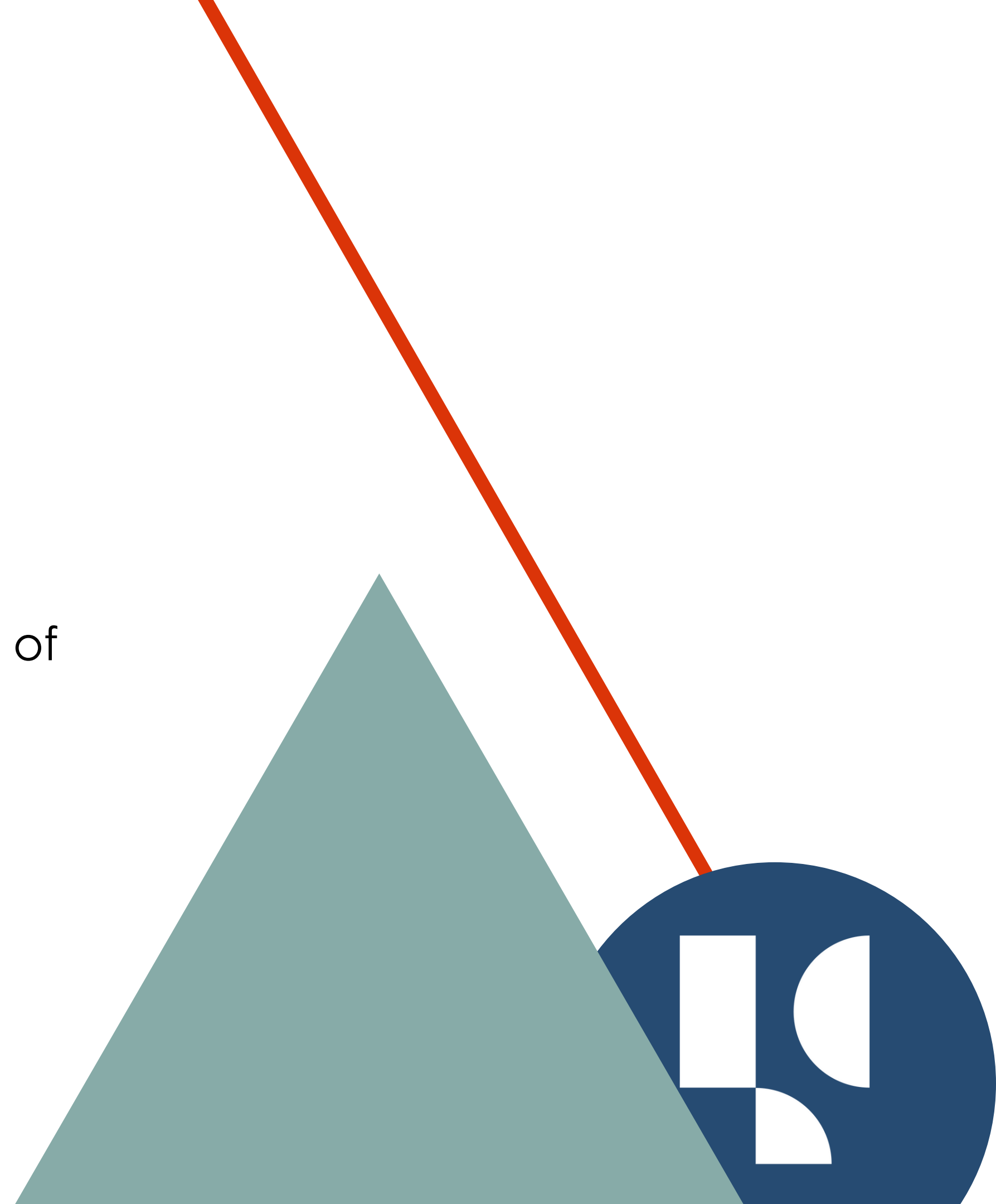
THE HEALTHCARE REGULATORY ENVIRONMENT

1.



HIGHLY REGULATED ENVIRONMENT

The delivery of health care services is the most regulated industry in the country. EVERY aspect of providing care is regulated by Federal, State, professional organizations, private insurance providers, etc.



**CENTERS FOR
MEDICARE AND
MEDICAID SERVICES**

**DEPARTMENT OF
HEALTH AND HUMAN
SERVICES - OFFICE
OF INSPECTOR
GENERAL**

**DEPARTMENT OF
JUSTICE - HEALTH
CARE FRAUD CIVIL,
CRIMINAL AND
STRIKEFORCE**

**STATE MEDICAID
FRAUD CONTROL
UNITS AND STATE
BOARD OF MEDICAL
EXAMINERS**





Comprehensive Strategy



CMS and DOJ share information with states, law enforcement, and private plans to target and track fraudsters

Detect Suspicious claims prior to payment

Prevent fraudulent providers from enrolling

Revoke bad actors from Medicare and Medicaid

CMS's Program Integrity Strategy

Keep Bad actors from reenrolling

Engage and Coordinate with Enforcement Partners

Focus on risk and reduce burden on legitimate providers

Each Dollar spent on health care-related fraud and abuse investigations through programs in the last 3 years recovered \$8.10

2.

FRAUD AND
ABUSE
ENFORCEMENT



**HEALTH
CARE
FRAUD**



**PROGRAM
ABUSE**





FRAUD

MEDICARE PROGRAM INTEGRITY MANUAL

“THE MOST FREQUENT KIND OF FRAUD ARISES FROM A FALSE STATEMENT OR MISREPRESENTATION MADE, OR CAUSED TO BE MADE, THAT IS MATERIAL TO ENTITLEMENT OR PAYMENT UNDER THE MEDICARE PROGRAM. THE VIOLATOR MAY BE A PROVIDER/SUPPLIER, A BENEFICIARY, AN EMPLOYEE OF A PROVIDER/SUPPLIER, OR SOME OTHER PERSON OR BUSINESS/ENTITY, INCLUDING A BILLING SERVICE OR A CONTRACTOR EMPLOYEE.”

HEALTH CARE FRAUD EXAMPLES

- Billing for services not provided or supplies not delivered
- Knowing incorrect reporting of diagnoses or procedures
- Unbundling charges
- Knowing upcoding
- Billing non-covered services as covered services
- Giving false information in support of a claim for services
- A pattern of conducting and billing follow-up services after the included time frame
- “Gang Visits” - billing for multiple nursing home visits without furnishing any specific service to patients





PROGRAM ABUSE

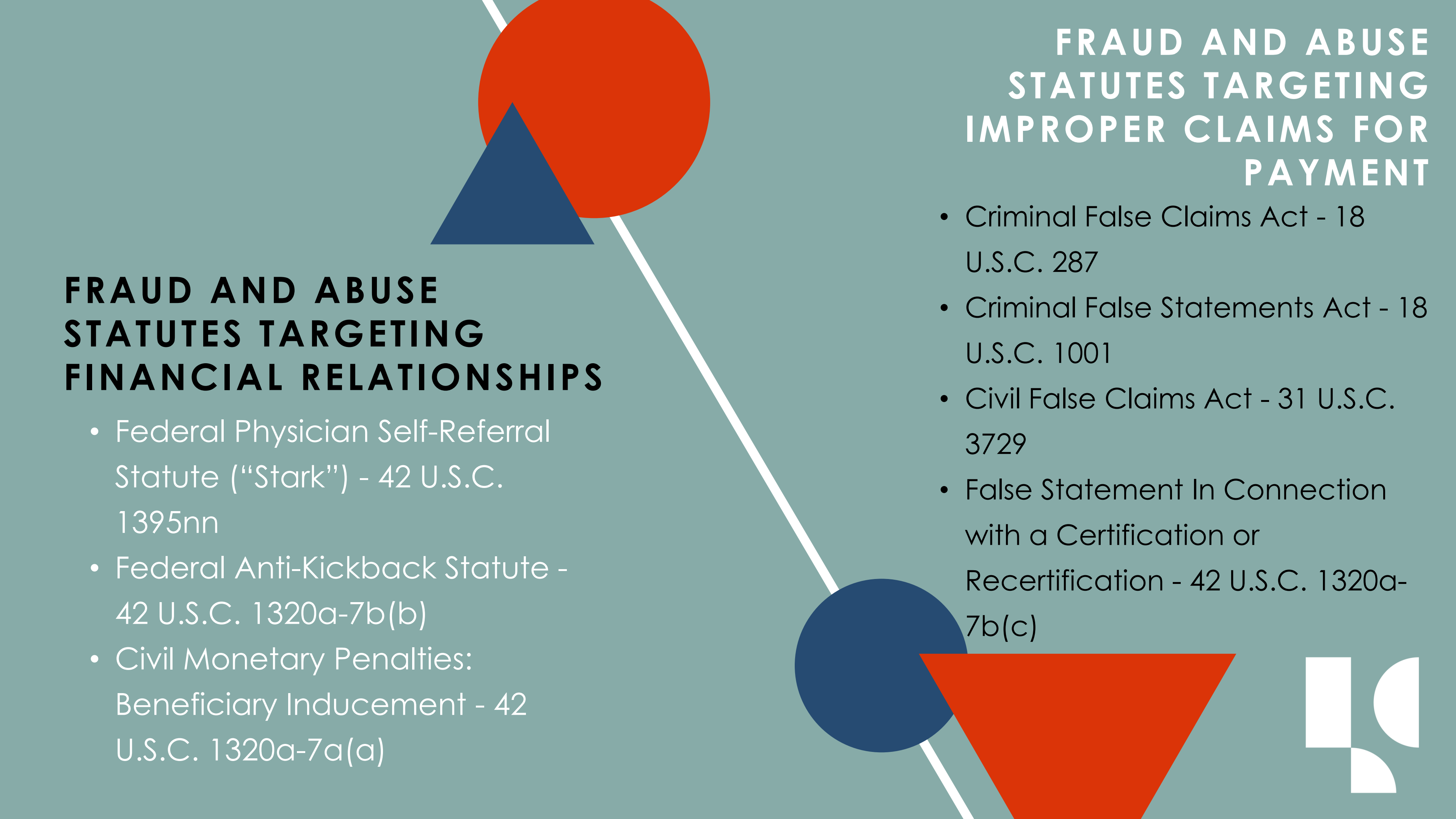
MEDICARE LEARNING NETWORK GUIDANCE

“ABUSE DESCRIBES PRACTICES THAT MAY DIRECTLY OR INDIRECTLY RESULT IN UNNECESSARY COSTS TO THE MEDICARE PROGRAM. ABUSE INCLUDES ANY PRACTICE THAT DOES NOT PROVIDE PATIENTS WITH MEDICALLY NECESSARY SERVICES OR MEET PROFESSIONALLY RECOGNIZED STANDARDS OF CARE.”

PROGRAM ABUSE EXAMPLES

- Billing for medically unnecessary services/overutilization
- Pattern of misusing codes on a claim - upcoding
- Patterns of denied or rejected claims by the payor without reviewing and correcting the deficiency, if present
- Patterns of services provided and billed with insufficient supporting documentation in the medical records
- Incomplete medical records
- Patterns of duplicate (cut and paste) medical record entries
- Failure to update treatment plans
- Lack of documentation showing the review and consideration of interdisciplinary team input





FRAUD AND ABUSE STATUTES TARGETING IMPROPER CLAIMS FOR PAYMENT

FRAUD AND ABUSE STATUTES TARGETING FINANCIAL RELATIONSHIPS

- Federal Physician Self-Referral Statute (“Stark”) - 42 U.S.C. 1395nn
- Federal Anti-Kickback Statute - 42 U.S.C. 1320a-7b(b)
- Civil Monetary Penalties: Beneficiary Inducement - 42 U.S.C. 1320a-7a(a)

- Criminal False Claims Act - 18 U.S.C. 287
- Criminal False Statements Act - 18 U.S.C. 1001
- Civil False Claims Act - 31 U.S.C. 3729
- False Statement In Connection with a Certification or Recertification - 42 U.S.C. 1320a-7b(c)



CIVIL FALSE CLAIMS ACT

31 U.S.C. 3729-33

- **Prohibition:** knowingly presenting, causing to be presented or conspiring to present any false or fraudulent claim for payment to the government.
- **Penalties:**
 - Treble damages (three times the amount of the claim);
 - Civil Fines between \$13,508 and \$27,018 PER claim;
 - Administrative Penalties including program exclusion.

OVERSIGHT RESPONSIBILITY

Enforcement agencies expect a provider's leadership to actively oversee the provider's operations and presumes the leadership has knowledge of the provider's operations.

- Actual knowledge
- Deliberate ignorance
- Reckless disregard

FIDUCIARY DUTY OF CARE

Leadership has a duty to carry out its fiduciary duties in “good faith” with the level of care an ordinary person would exercise in similar circumstances, and in a manner he/she reasonably believes is in the best interest of the company.

Two Elements

Judgment

- Applying the Duty of Care to situations where Leadership is called to exercise judgment (i.e. a vote).

Oversight

- Applying the Duty of Care to Leadership’s obligation to exercise meaningful oversight of the company’s operations – keeping its finger on the pulse of what’s happening.

MISTAKES ARE NOT FRAUD OR ABUSE ... BUT THEY CAN BECOME EITHER OR BOTH



MISTAKES WILL HAPPEN

Considering the expansive nature of healthcare regulations covering licensure, billing, coding, financial relationships, privacy, etc., the business of even a normal day, and employee turnover, the potential for mistakes will be ever-present.

IT'S ALL ABOUT HOW YOU HANDLE THE MISTAKE

Providers need to develop policies and protocols and compliance plans to train and guide behavior, detect and correct mistakes. When a mistake is discovered, the provider must assess how to correct the mistake and how to prevent it from happening again.

CODE OF
CONDUCT –
ESTABLISHING A
CULTURE OF
COMPLIANCE

3.



Starting / Evaluating / updating compliance efforts:

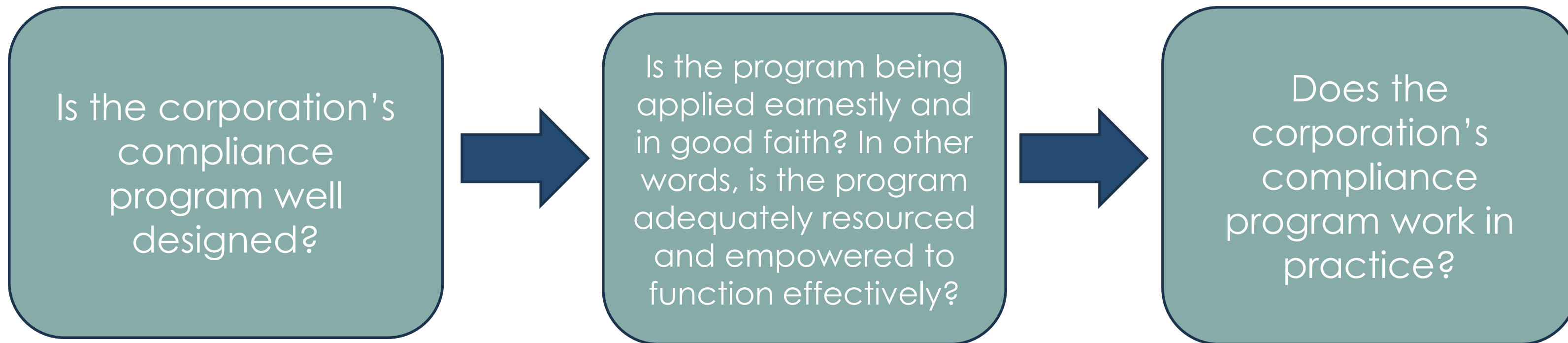
- How do I start?
 - Do I need a dedicated compliance officer?
 - Who is responsible for compliance?
 - What training does the compliance officer need?
 - What documents do I need for a compliance program?
 - Where do I get policies?
 - What needs to be in a Code of Conduct?
 - How do I know if the compliance program is effective?
 - Does the compliance program need to cover every operation / service?
 - What if we forget to include something?
- What's next?

“We recognize that each company’s risk profile and solutions to reduce its risks warrant particularized evaluation. Accordingly, we make a reasonable, individualized determination in each case that considers various factors including, but not limited to, the company’s size, industry, geographic footprint, regulatory landscape, and other factors, both internal and external to the company’s operations, that might impact its compliance program.” – Office of Inspector General (OIG)



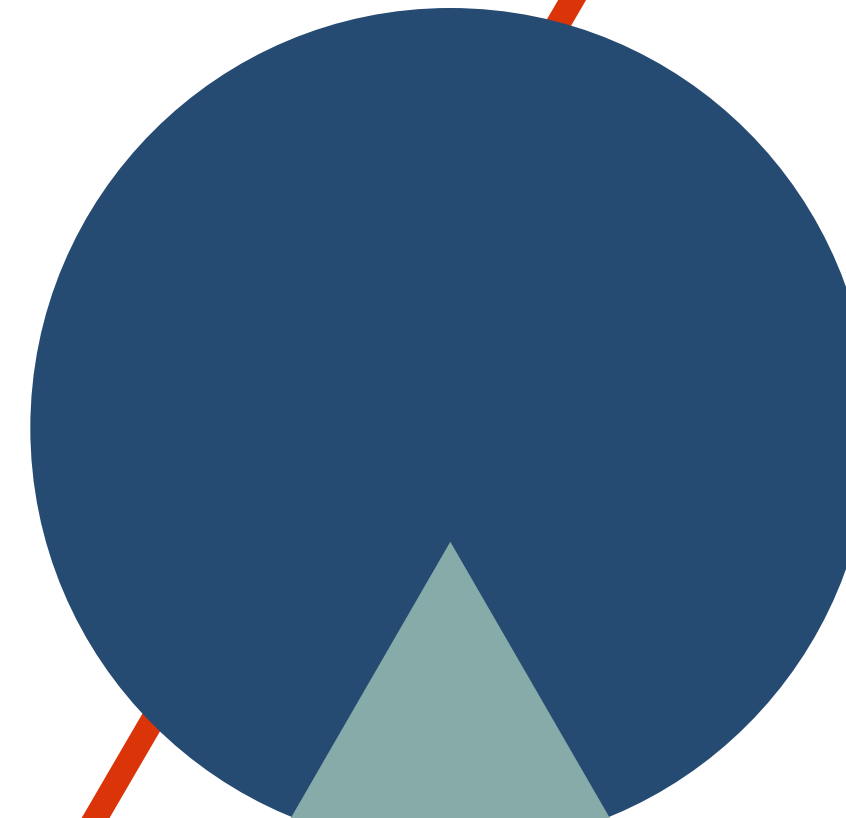
DOJ Evaluation of Corporate Compliance Programs

The DOJ updated its Evaluation of Corporate Compliance Programs guidance for prosecutors, which emphasizes there is “no one-size-fits-all” approach to compliance. Prosecutors should ask three fundamental questions to evaluate a corporate compliance program:



DOCUMENTATION IS THE KEY

- Treat compliance like your medical records - if your actions aren't documented – they didn't happen;
- Provides evidence of your good faith efforts to comply;
- Enables you to track your compliance effectiveness;
- Provides the basis for your defense against any allegations – sometimes 6 – 10 years later;



GETTING STARTED

Perfection is the
enemy of good.



The OIG's Seven Recommended Compliance Program Elements



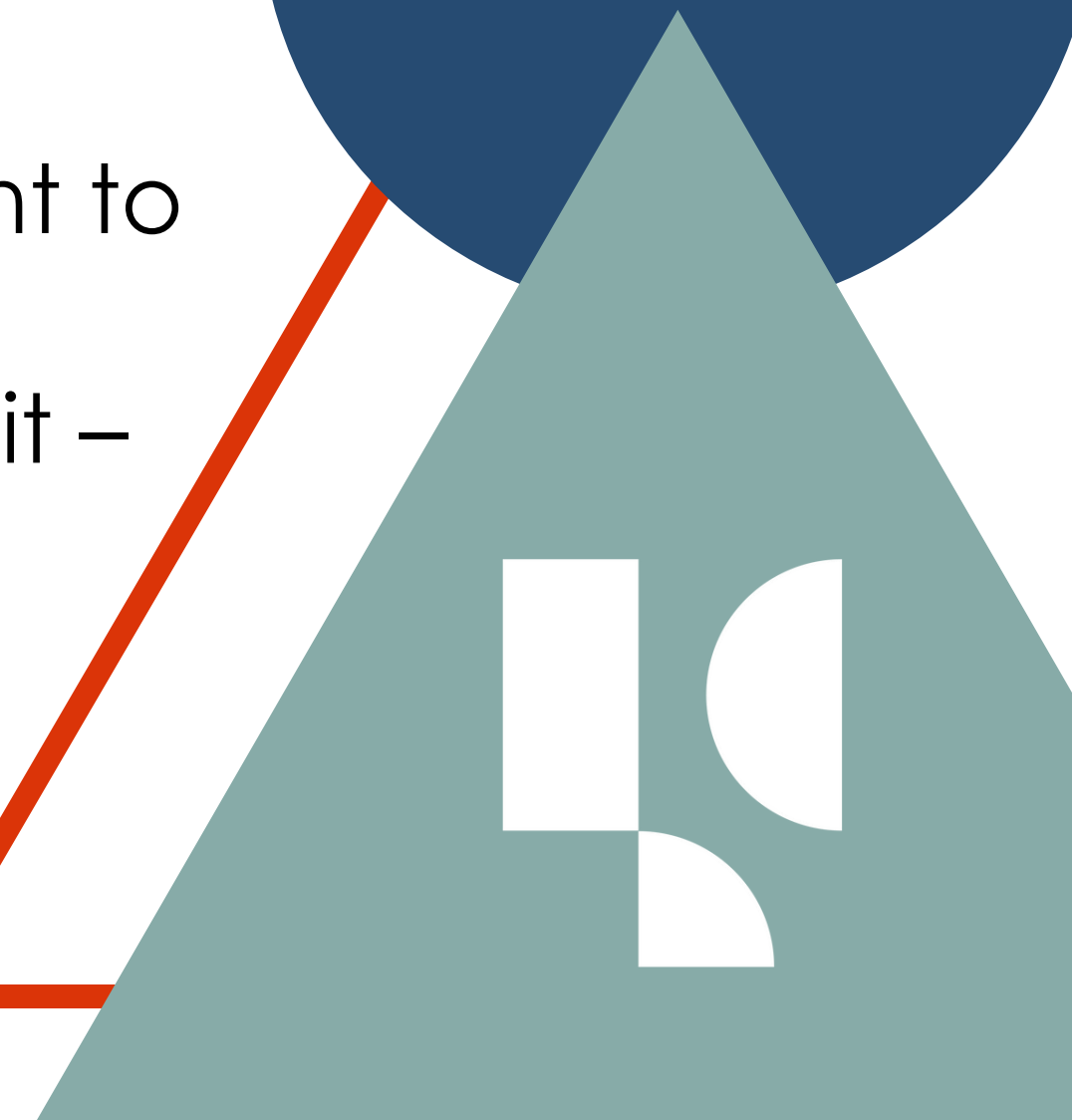
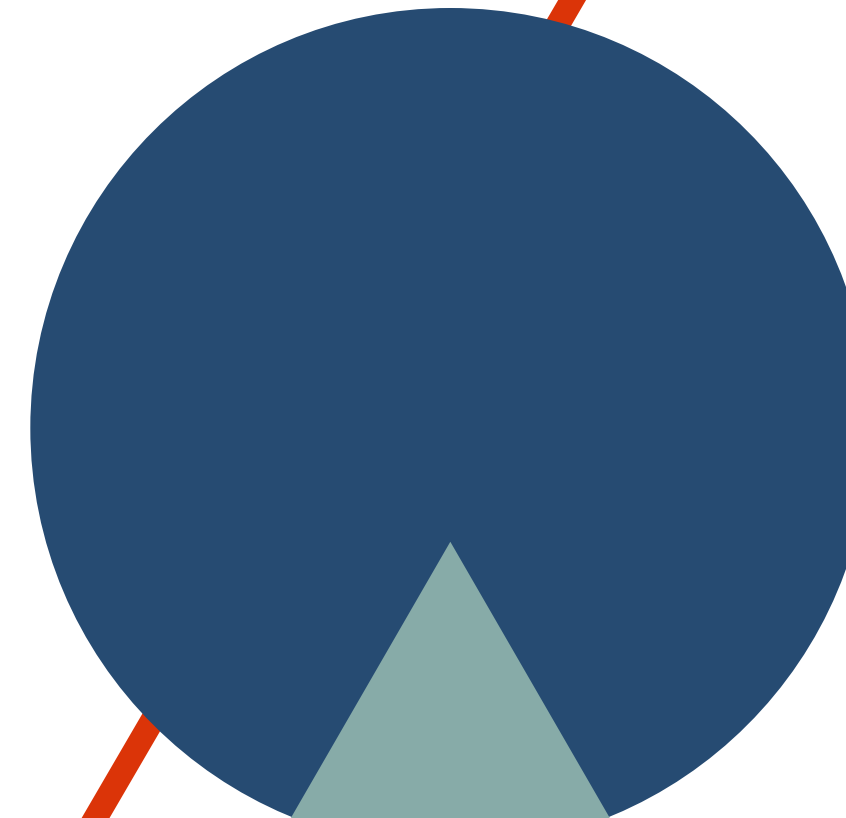
THE COMPLIANCE ROADMAP

An effective Code of Conduct is the provider's roadmap to establishing a culture of compliance.

- Communicates leadership's commitment to compliance;
- Establishes clear compliance goals, expectations, and standards;
- Provides a framework to guide compliant behavior for the unexpected.

Articulate What You Want

- What values, standards and behavior do you want to instill in your organization?
- What matters to you and your staff?
- What kind of working environment do you want to create?
- What kind of patient care environment do you want to provide?
- As a leader – you must set the tone and adhere to it – Lead by Example.




Provide more than lofty statements and vague standards – put your principles in practical terms.

- **Provide Meaningful Direction:**

- What does this mean?
- Wait, does this apply to me?
- When does this apply to me?
- Who else does it apply to?
- What if I'm on break?
- What do I actually have to do?
- How am I supposed to do this?



THE GOAL OF OPEN COMMUNICATIONS



- Encourage and enable everyone to express their compliance, quality and other concerns and/or suggestions for improvement without fear of retaliation. It is the fostering of an engaged dialogue meant to improve the provider's compliance.
 - Open Communication is essential to maintaining an effective Compliance Program by increasing the provider's ability to internally identify and respond to potential and/or actual compliance issues, quality issues or performance improvement suggestions.
 - Open Communication is an essential element for establishing a Culture of Compliance supported throughout the provider, including all personnel as well as contractors and others.
- 



SET CLEAR EXPECTATIONS AND PROVIDE THE TOOLS TO MEET THEM

Principle: Personnel should openly communicate regarding provider operations.

Practicality: How?

- Provide encouragement or offer assistance if you see a colleague could use some help in that moment.
 - If you or a colleague are unsure of what to do with a task or in a situation, work together to get the information – ask your supervisor, contact the compliance officer. Don't be afraid to ask the question? If you don't know the answer, it's likely others may not know either.
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SET CLEAR EXPECTATIONS AND PROVIDE THE TOOLS TO MEET THEM

Code of Conduct Policy:

“Staff is expected to act professionally.” How?

- Wear your name badge at all times above the waist and in plain view.
- Dress in a neat, clean, professionally appropriate manner.
- Clearly identify yourself and your professional level to patients and family.
- Respectfully address patients by their last name.
- Do not make offensive or judgmental comments about patients or staff outside of appropriate forums.
- Assume any negative comments you might make will be overheard.
- If you are visible to patients and family you are “on duty” – if you are approached, you are expected to assist them until other personnel clearly assume responsibility.
- Remember that this is a stressful time for patients and their family.

COMMON ELEMENTS

OF

A CODE OF CONDUCT

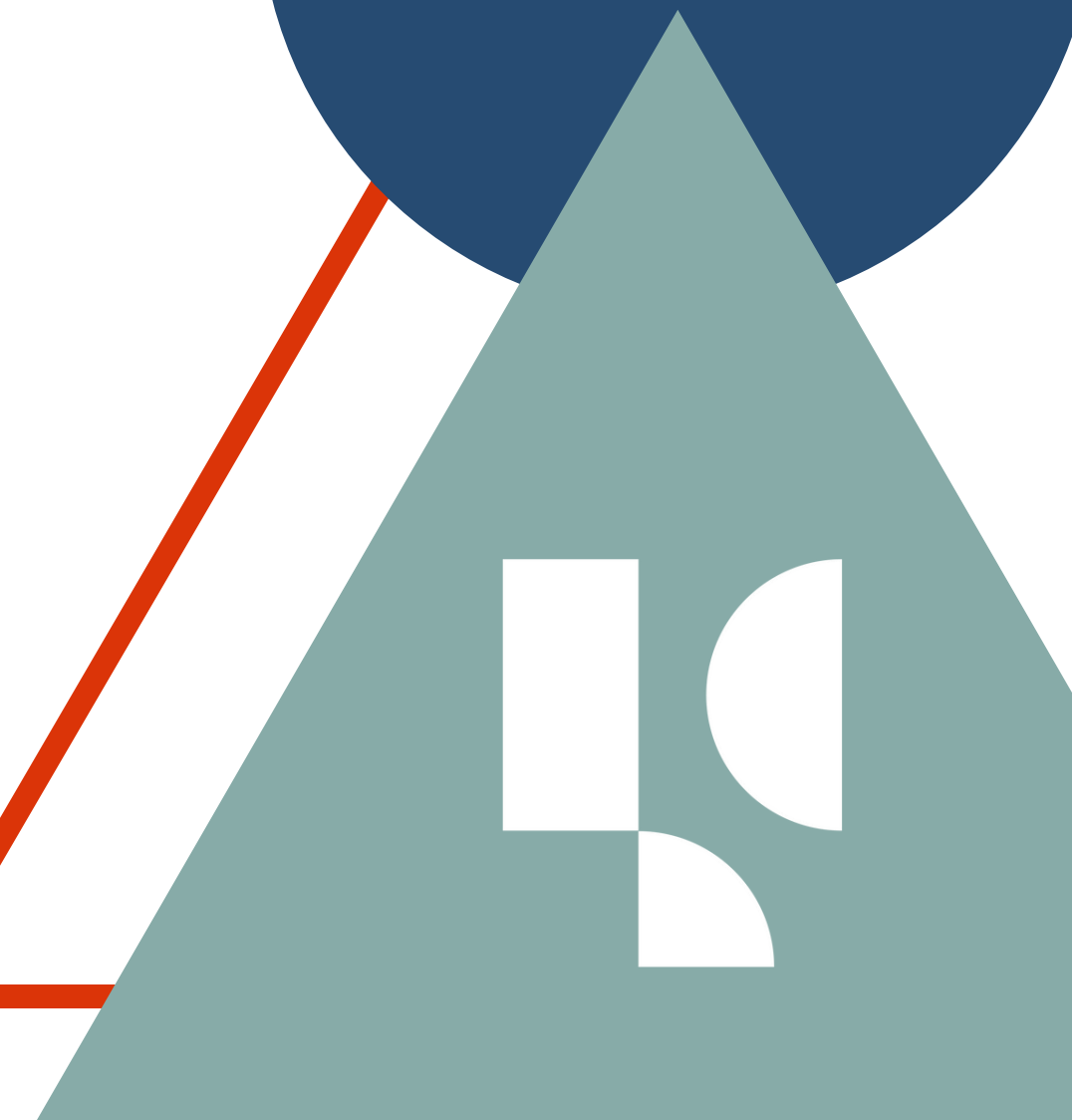
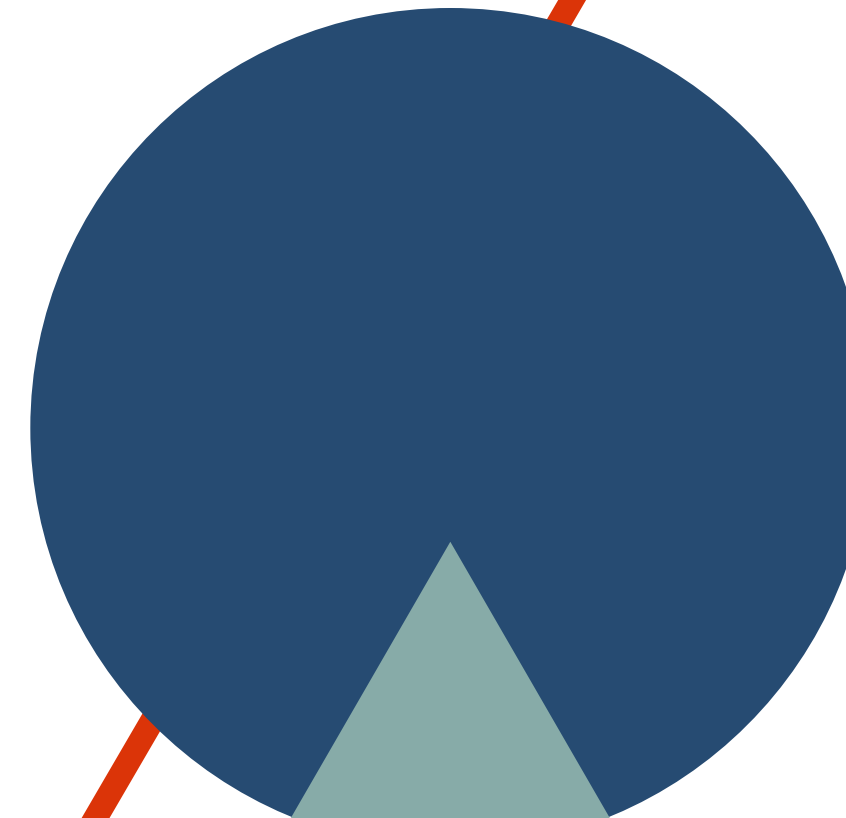
- Leadership Statement setting the tone and supporting the Code;
- Encouraging Open Communications;
- Prohibiting Retaliation;
- Ensuring a Safe Work Environment;
- Ensuring Patient Safety;

- Commitment to HIPAA Compliance;
- Conflicts of Interest;
- Compliance with Government Regulations;
- Commitment to Compliant Billing;
- Committing to Audits and Education.



Code of Conduct

- How has the Code of Conduct been incorporated into the provider's policies?
 - Orientation?
 - Refresher Training?
- How do we know the Code of Conduct is understood and accepted across the provider's staff and leadership?
 - Training Quizzes?
 - Staff Interviews?
- Has management taken affirmative steps to publicize the importance of the Code to all of its staff?





Reinforce the Code through Education:

Frequent: Frequent (4 – 10 times/year) short educational sessions (10-15 minutes) are far more effective than one big annual compliance education session.

Targeted: The education session should focus on one particular area of compliance – i.e. one section of the Code.

Measurable: The education should be organized to achieve a specific compliance education goal and include a small quiz (approx. 5 questions) at the end that incorporate the presentation.

Benefits of Code of Conduct Training

Frequent, targeted, measurable education has the following benefits:

- Demonstrates compliance is important to the Practice
- Documents the provider's contemporaneous good faith efforts to comply
- Provides a useful information tool to identify areas of improvement

STRIVE FOR
CONTINUOUS
IMPROVEMENT



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