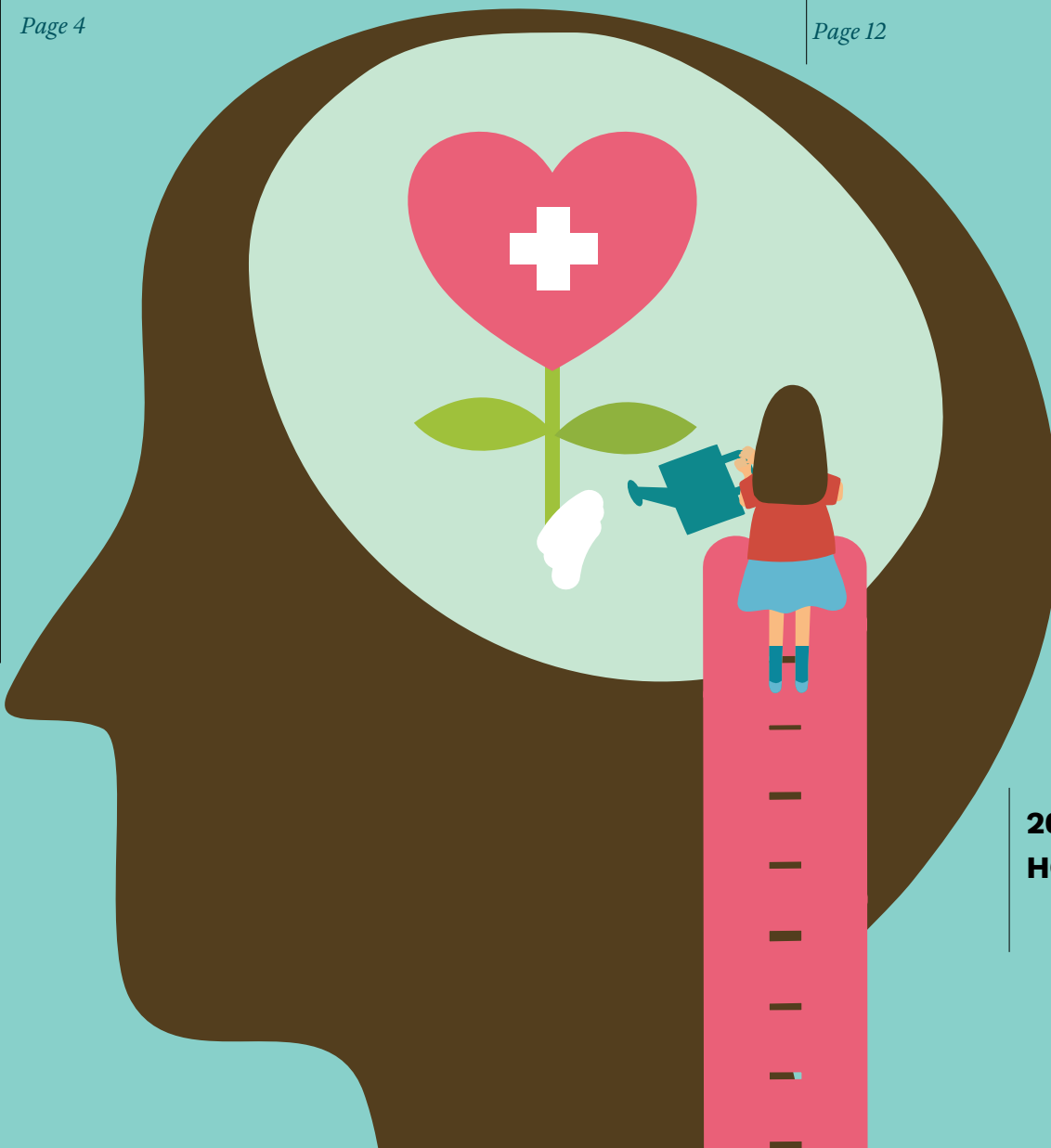# HEALTHLAW
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How PDPM Risks and Opportunities Impact SNF Compliance Programs

Amy Dalton, PYA, P.C.

Last October, the Centers for Medicare & Medicaid Services (CMS) replaced its Resource Utilization Group, Version IV (RUG-IV) payment model with the Patient-Driven Payment Model (PDPM).[1] The new payment model has transformed Medicare Part A Skilled Nursing Facility (SNF) stays from a therapy-driven model to one that places more emphasis on nursing services, differentiated payments for medically complex patients, and increased focus on appropriate length of stay.

PDPM creates both challenges and opportunities for the more than 15,000 SNFs across America. These facilities are also impacted by the pending proposed rule regarding Requirements of Participation: Phase III,[2] which will require SNFs to have a functioning compliance and ethics program in place.

However, the bedrock of SNF compliance continues to be the Seven Fundamental Elements of an Effective Compliance Program outlined by the Office of the Inspector General (OIG) in the Compliance Program Guidance for Nursing Facilities and its supplemental guidance. The OIG's Seven Elements are intended to serve as an industry standard, offering a framework and foundation in the development of well-defined plans and strategies to build successful, effective compliance programs. With a strong foundation, providers are successfully positioned to incorporate PDPM and manage its risk factors.

Simply creating a compliance checklist is not sufficient. The program must continuously evolve to meet changing regulatory requirements and organizational needs. The salient question remains: Is our SNF truly effective in deterring fraud, waste, and abuse?

42 C.F.R. 483.85 extends the program scope of the Seven Elements to include SNF contractors and volunteers—and provides additional requirements for organizations with more than five locations.

PDPM Transition Hurdles

Despite SNFs having had time to prepare for PDPM, there continues to be ongoing uncertainty and complex challenges from a clinical and operational perspective.

These challenges include:

◗ Services that are individualized, skilled, medically necessary, and documented appropriately.

◗ Coding that captures all patient characteristics and comorbidities.

◗ Alignment of care planning and patient goals.

◗ Potential revenue cycle and back office challenges.

◗ Training and documentation consistency across multi-facility organizations.

Best Practices Going Forward

As SNFs become more familiar with the intricacies of PDPM, it's more important than ever to rely on the Seven Elements of effective compliance to develop or revise their compliance and ethics programs. Robust programs mitigate risk, but also help establish a compliance culture that can improve operational efficiencies, reduce costs associated with regulatory non-compliance, and provide a unified framework for ethical operations for an entire organization.

PDPM risks should be delineated in the SNF's compliance work plan—and facilities should conduct a thorough annual risk analysis informed by historical facility performance metrics, such as quality of care, overpayment history, and recent OIG national settlements.

Other best practices include:

◗ Identifying areas of concern, such as the hurdles listed previously, past survey results, and the rules and regulations governing the SNF.

◗ Developing training for all applicable personnel involved in providing and billing for the services. The training should encompass the compliance program, Code of Conduct, and the importance of individualized patient care.

◗ Ensuring interdisciplinary/departmental open lines of communication.

◗ Developing an auditing and monitoring program that identifies areas for educational opportunities.

◗ Monitoring changes to the regulations and updating the compliance and ethics program, relevant policies and procedures, and staff training topics.

◗ Being proactive in preparing, implementing, and adjusting compliance program efforts. Establishing a culture of compliance requires support from organizational leadership and sufficient resources, such as adequate support staff and operational budget.

◗ Considering the use of a third-party reviewer to explore additional action that may be needed, should a problem be revealed.

Aligning Compliance with the QAPI Program

SNFs across the nation are taking quality programs to new levels by harnessing the mutually reinforcing strengths of quality assurance and performance improvement (QAPI). There's much to be gained by aligning the QAPI program with compliance initiatives, as quality of care remains the primary focus of both OIG Compliance Guideline reports.

The key elements of a successful QAPI program follow:

1. Design and Scope

2. Governance and Leadership

3. Feedback, Data Systems, and Monitoring

4. Performance Improvement Projects (PIPs)

5. Systematic Analysis and Systemic Action

Both the overall compliance program and QAPI initiatives are good examples of the old adage heard in quality improvement circles: If you measure it, it *will* improve.

Moving from Volume to Value

Clearly, the RUG-IV payment model had significant drawbacks. It created an incentive for SNF providers to furnish therapy regardless of the patient's unique characteristics, goals, or needs. PDPM eliminates this incentive and improves the overall accuracy and appropriateness of SNF payments as well as care coordination for the patient.

As SNFs refine and optimize PDPM implementation, it should always be in the larger context of the Seven Elements of an Effective Compliance Program that have guided facilities so well for the past 20 years.

Endnotes

1. 83 Fed. Reg. 39162 (Aug. 8, 2018).
2. 84 Fed. Reg. 34737 (July 18, 2019).

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Seven Elements of an Effective Compliance Program	42 C.F.R. 483.85 Final SNF Compliance Program Requirements
Implementing written policies, procedures, and standards of conduct	Establish written compliance and ethics standards, policies, and procedures that are reasonably capable of reducing the prospect of criminal, civil, and administrative violations. There should be a contact person to whom individuals may report suspected violations, and an alternate method where violations can be reported anonymously without fear of retribution. Disciplinary standards should clearly spell out the consequences for committing violations.
Designating a compliance officer and compliance committee	This individual must report directly to the operating organization's governing body and should not be subordinate to the general counsel, chief financial officer, or chief operating officer.
Conducting effective training and education	Educational materials need to explain in a practical manner what is required under the program.
Developing effective lines of communication	Having written guidelines is not enough. The facility must take steps to effectively communicate the standards, policies, and procedures to the entire staff (including contractors and volunteers).
Enforcing standards through well–publicized disciplinary guidelines	The SNF's policies and procedures must be consistently enforced through appropriate disciplinary mechanisms (including discipline for failing to detect and report a violation to the compliance committee).
Conducting internal auditing and monitoring	Establish monitoring and auditing systems to detect criminal, civil, and administrative violations by employees, contractors, or volunteers. The SNF must review its compliance and ethics program annually and revise its program as needed to reflect changes in all applicable laws or regulations—and to improve its performance in deterring, reducing, and detecting violations.
Responding promptly to detected offenses and undertaking corrective action	After a violation is detected, the SNF must ensure that all reasonable steps are taken to respond appropriately to the violation and to prevent further similar violations.