

THE  
COALITION

OF BEHAVIORAL  
HEALTH  
AGENCIES, INC.

# Compliance, Information, and Risk ... oh my!!!

The Coalition of Behavioral Health Agencies, Inc  
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## The Economy Brings New Risks

- **Increased demand for services (especially in mental health and substance abuse services)**
- **Diminishing resources and funding**
  - Drops in investment holdings and investment returns
  - Decreasing contribution levels
  - Cut-backs in government funding
  - Sponsorships ... the new “S” word
- **Increased regulations**
- **Increased oversight and audit activity**
  - OMIG activity
  - Other government funders

## The Economy Brings New Risks

- **Expense and staffing cut-backs (or growth not in-line with growth in service levels)**
- **Inability to develop adequate infrastructure (keeping up with demand levels)**
- **Documentation and quality assurance can suffer as a result of increased demand for direct care**

# The Great Recession

- Unemployment – National 8.3% (1% change in unemployment = 1 million new individuals on Medicaid/Child Health Plus)
- Consumer spending down 4.3% during 4<sup>th</sup> Q of 2008, driving GNP down 6.2% (Largest decline in 26 years)
- Wholesalers have cut inventory ... a warning signal that companies may continue to cut production levels

# The Great Recession

- Banks continue to tighten credit
- The national Association of Realtors reported that home prices fell 12.4% during the 4<sup>th</sup> quarter of 2008 – the largest drop in 30 years

## The Great Recession – Impact on Nonprofit organizations

- Demand for services is on the rise
- Contributions/Funding are down:
  - Individuals - loss of jobs and investments
  - Businesses - sagging revenues and profits
  - Foundations – declines in portfolios
  - Government – loss of tax dollars/need to balance budget
- Drops in investment returns

# The Great Recession – Impact on Nonprofit organizations

- Tightening credit
- Harder to balance budgets
- Establishing contingency budgets/what if planning
- Looking for creative ways to do more with less

## What the Sector Needs to do to Survive

- It is anticipated that some agencies will not survive the recession
- Sector needs to find ways to function more collaboratively
- Sector needs to find efficiencies and economies of scale
- Sector needs to come together to create a better model for the future



# Overview of the Not-for-Profit Sector

## Current Trends:

- Increased accountability (actions, decisions, policies, etc.)
- Outcome Measurements and Reporting (impact of operations)
- Enhanced Transparency (external and internal)
- Increased Board/Corporate Governance (policies, manuals, QA, controls, etc.)
- Need to assess risk and plan and control it
- Increased Oversight and Audit Involvement (compliance and enforcement – more hoops)
- Increased call for collaboration at all levels
- More Scrutiny by funders, the press, and watchdog organizations
- Globalization

# Overview of the Not-for-Profit Sector

## Current Trends *(Continued)*:

- Sector is behind the curve and has limited resources
- Increased demand for services without adequate funding
- Need for enhanced discretionary funding
- Difficult to find quality staff and Board members
- Greater need for streamlined operations and cost effective services
- Nonprofit Panel Releases 31 Best Practices (March 2007)
  - [Nonprofitpanel.org](http://Nonprofitpanel.org)
- New 990 released with entirely different focus

# Who is Interested in Your Operations

As a nonprofit organization, there is a public trust to:

- Funders (government agencies, private foundations, individuals, etc.)
  - Funds are used for appropriate purposes
  - Costs are valid, allowable, and properly allocated
  - Funded benefit is maximized
  - Compliance with rules and regulations
  - Proper documentation exists to support work performed
  - Proper controls exist
  - Timely and accurate reporting

# Who is Interested in Your Operations

- Funders - OMIG
  - Authorized to hire 200 staff members
  - Increased enforcement and investigations
    - Target recoveries
      - FY 2009 - \$322 Million
      - FY 2010 - \$429 Million
      - FY 2011 - \$644 Million
  - Interagency collaboration
  - Increased data mining activities/benchmarking
  - Mandatory compliance programs
  - Qui Tam provisions

# Who is Interested in Your Operations

- Constituents/Clients/Patients
  - Quality results
  - Maximized benefit
  - Engaged and respectful service
  - Ease of use and accessibility
  - Open communication (with clients and collaborative partners)
  - Timeliness and responsiveness

# Who is Interested in Your Operations

- The general public
  - Full disclosure and transparency
  - Benefit in relationship to funding
  - Accuracy of information
  - Proper oversight and controls
- The press
  - Controversial news sells papers
  - Reality vs. perception (the spin)

# Proper monitoring

- Most organizations need to implement systems
  - Grant monitoring provisions (understanding provisions)
  - Compliance with laws and regulations
  - Ensure proper controls
  - Operational effectiveness and efficiency
  - Compliance and QA provisions
  - Corporate compliance officer
  - Proper internal education of responsibilities



# Mandatory Compliance Program

- Written policies and procedures
- Compliance officer
- Training and education of applicable staff
- Communication between staff and compliance officer
- A system to routinely identify compliance risk areas
- Policies to encourage positive behavior (carrot & stick)
- A system to respond to and investigate compliance problems



• Proper whistleblower provisions



# OMIG's 2009-2010 Plan

- Compliance Guidance
  - New guidance being developed on nursing homes, home care, and OASAS providers
  - Article 28/36 of Public Health Law and Article 16/31 of Mental Hygiene Law are statutorily mandated to maintain an effective compliance program
  - Provider compliance programs will be reviewed during audits/investigations
  - Failure to have effective plans will subject providers to sanctions, penalties, or even exclusion from Medicaid

# OMIG's 2009-2010 Plan

- Looking at all areas including:
  - Adult day health care – clinical and rate audits
  - Early intervention
  - OASAS
    - Chemical dependence inpatient rehabilitation services (clinical and rates)
    - Ninety day billing exception codes
    - Outpatient chemical dependence services
  - OCFS (healthcare integration agencies and waiver service providers)

# OMIG's 2009-2010 Plan

- OMH
  - Clinic restructuring
  - Continuing day treatment reimbursement
  - Community residence rehabilitation services
  - Case management services
  - Ninety day billing exception codes
  - COPS recoveries
  - Outpatient services
  - Prepaid mental health

# OMIG's 2009-2010 Plan

- OMRDD
  - Coordination of testing
  - Case management services
  - Ninety day billing exception codes

# Board's Responsibilities

Three duties:

- **Duty of Care:**

the level of competence that is expected of a board member, and is commonly expressed as the duty of "care that an ordinarily prudent person would exercise in a like position and under similar circumstances."

This means that a board member owes the duty to exercise reasonable care when he or she makes a decision as a steward of the organization.

# Board's Responsibilities

- **Duty of Loyalty:**

is a standard of faithfulness; a board member must give undivided allegiance when making decisions affecting the organization. This means that a board member can never use information obtained as a member for personal gain, but must act in the best interests of the organization.

(Conflicts of Interest)

# Board's Responsibilities

- **Duty of Obedience:**

requires board members to be faithful to the organization's mission. They are not permitted to act in a way that is inconsistent with the central goals of the organization. A basis for this rule lies in the public's trust that the organization will manage donated funds/grants to fulfill the organization's mission.

# Board's Responsibilities

- Determine the Organization's Mission and Purpose
- Select the Executive
- Support the Executive and Review His or Her Performance
- Ensure Effective Organizational Planning
- Ensure Adequate Resources
- Manage Resources Effectively
- Determine and Monitor the Organization's Programs and Services
- Enhance the Organization's Public Image
- Serve as a Court of Appeal
- Assess Its Own Performance



# Board's Responsibilities

- Governance Documents:
  - Audit Committee
  - Conflicts of interest
  - Fraud detection and prevention policy
  - Document detection and retention policy
  - Whistleblower policies

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# Board's Tools

- Proper information and reporting
  - Financial results
    - Actual vs. budget reporting
    - Financial position and related indicators (liquidity, days in cash, etc.)
  - Operational outcomes
  - Review of funding agency audit results
- Communication with external/internal auditors
  - Management letter
  - Risk assessment
- Direct communication with corporate compliance officer
  - Quality assurance/oversight reporting
  - Regular updates on findings

# Summary

- Boards need to establish appropriate policies, budgets, and controls and exhibit fiduciary responsibility that:
  - Are mission and priority driven
  - Promotes accuracy, integrity, compliance, and transparency
  - Promotes quality of service (and has a system to monitor and improve)
  - Builds confidence at all levels
  - Creates on-going viability and maximizes utility
  - Develops appropriate accountability
  - Ensures proper controls at all levels including the Board
  - Fosters education
  - Develops proper communication channels with internal and external sources (i.e. compliance officer, internal auditors, external auditors)

# Thank You

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