

Legal Risk Management of Alternative Programs

Tom Crabb – Shareholder
Radey Law Firm
301 South Bronough Street, Suite 200
Tallahassee, FL 32301
Telephone: 850-425-6654
tcrabb@radeylaw.com
Friday, March 31, 2017



1

Objectives

- ◆ Increase the understanding and awareness of legal risk
- ◆ Discuss strategies and processes for managing legal risk
- ◆ Identify activities with high legal risk



2

First Principles



3

What is Risk?

The chance of injury, damage or loss



4

What is Risk Management?

A process used to identify, understand, and control the potential adverse impacts of an activity



5

What is Legal Risk Management?

Risk management focused on those potential adverse impacts on an organization from failure to comply with the law, contracts, and non-contractual obligations



6

What are Non-Contractual Obligations?

Policies, guidelines, promises made short of a contract

What are Some of the Potential Adverse Impacts?

- ◆ Legal liability (being forced to pay money or act)
- ◆ Litigation (lose even when you win)

What are Some of the Potential Adverse Impacts?

- ◆ Regulatory enforcement (fines, licensure action)
- ◆ Reputational damage including cybersmear

What are Some of the Potential Adverse Impacts?

- ◆ Resource drain (e.g., time and energy that could have been devoted elsewhere)
- ◆ Failure to achieve program goals or maximize program effectiveness

Why Engage in Legal Risk Management?

What are the Steps of a Legal Risk Management Process?

- Identify the actions and inactions present in your organization that have legal risk.
- Identify the magnitude and likelihood of potential adverse impacts for those actions and inactions.

What are the Steps of a Legal Risk Management Process?

- c. Can the risk be avoided entirely? Can we cease the activity?
- d. Can we modify our conduct to reduce the likelihood and magnitude of an adverse impact for a given activity?



13

What are the Steps of a Legal Risk Management Process?

- e. Can we mitigate the impact of retained risk?
 - i. Insurance
 - ii. Funding and reserve increases
 - iii. State law changes
- f. Act based on likelihood and severity. Address those activities with the biggest, most likely adverse impacts first.



14

Assemble your Dream Team

- ◆ Who in your organization will manage legal issues? 2 or 3 people with a deep knowledge of the program, approached from different perspectives. (e.g., medical director and operations director)
- ◆ Attorney involvement is mission critical



15

Legal Risk Management Is for All Organizations

The size of your organization impacts how you should manage legal risk but not whether you should manage legal risk



16

High Legal Risk Areas – 10,000 Foot View



17

High Legal Risk Areas – 10,000 Foot View

Lack of clarity in procedures



18

**High Legal Risk Areas –
10,000 Foot View**

Failure to be attuned to the unreasonable



**High Legal Risk Areas –
10,000 Foot View**

Failure to appreciate the individuality of persons and situations



**High Legal Risk Areas –
10,000 Foot View**

Failure to address discord when it first becomes apparent



**High Legal Risk Areas –
10,000 Foot View**

Conflicts of interest



22


**High Legal Risk Areas –
10,000 Foot View**

New activities, new directions



23

**High Legal Risk Areas –
50 Foot View**



24

**High Legal Risk Areas –
50 Foot View**

Confidentiality and Privacy

- a. Compliance with HIPAA and/or 42 C.F.R. Part 2
- b. Cybersecurity and physical safeguards
- c. Consent requirements



**High Legal Risk Areas –
50 Foot View**

**State Law and Changes in the
Law**



**High Legal Risk Areas –
50 Foot View**

Substantial Contracts




**High Legal Risk Areas –
50 Foot View**

Lack of Internal Auditing and
Controls



28


**High Legal Risk Areas –
Up Close and Personal**



29

**High Legal Risk Areas –
Up Close and Personal**

Records Productions and
Subpoenas



30

**High Legal Risk Areas –
Up Close and Personal**

Mission Critical Contracts



**High Legal Risk Areas –
Up Close and Personal**

Tailored Monitoring and
Treatment Decisions



**High Legal Risk Areas –
Up Close and Personal**

Key Personnel Transitions



Managing Legal Risk

- ◆ Triage by magnitude and likelihood.
- ◆ Is avoidance possible?
- ◆ Can our conduct be modified?

Managing Legal Risk

Can we modify our conduct to reduce the likelihood and magnitude of an adverse impact for a given activity?

Mitigating Legal Risk

- ◆ Insurance
- ◆ Funding and reserve increases
- ◆ State law changes

Contact Information

Tom Crabb – Shareholder
Radey Law Firm
301 South Bronough Street, Suite 200
Tallahassee, FL 32301
Telephone: 850-425-6654
tcrabb@radeylaw.com