

OIG ISSUES COMPLIANCE OVERSIGHT GUIDANCE FOR GOVERNING BOARDS OF HEALTH CARE ORGANIZATIONS

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Health Care Alert

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On April 20, 2015, the Office of Inspector General (OIG), in collaboration with the Association of Healthcare Internal Auditors, the American Health Lawyers Association, and the Health Care Compliance Association, issued compliance guidance entitled *Practical Guidance for Health Care Governing Boards on Compliance Oversight* ("Guidelines") in order to aid governing boards of health care organizations (each, a "Board" and together, "Boards") in their obligation to provide corporate compliance oversight.

This guidance seeks to provide practical advice and assistance to Boards related to (i) their relationship with management and with departments that play key roles in compliance, (ii) remaining informed on their organization's ability to maintain an effective compliance program and identify and resolve compliance issues, and (iii) their role in encouraging a corporate-wide compliance culture.

GUIDELINES SUMMARY

Expectations for Board Oversight and Evaluation of Compliance Program Functions.

The OIG emphasizes the importance of ensuring the existence of an adequate corporate reporting system. Such a system should provide Boards with timely information regarding entities' compliance with applicable laws and enable Boards to evaluate and respond to potential compliance issues or failures. Boards are encouraged to rely on existing OIG compliance program guidance, Federal Sentencing Guidelines, and OIG Corporate Integrity Agreements with other health care entities to create and maintain an effective compliance program and evaluate existing programs for effectiveness.

The Guidelines recognize that an organization's approach to compliance program design will be dependent on the size, complexity, and resources of the organization. For example, smaller organizations may be able to meet Guidelines requirements with "less formality and fewer resources," but may require more direct Board involvement in compliance efforts.

With respect to organization management, Boards are tasked with evaluating how their management identifies and investigates compliance risk, implements corrective action, and communicates during this process. Boards are further tasked with assessing management's process for resolving internal conflicts with regard to compliance issues. Boards must hold management accountable for maintaining an effective compliance program and keeping the Boards well informed. In this regard, the Guidelines suggest Boards develop "objective scorecards" to measure management's effectiveness in maintaining a successful compliance program.

The Guidelines further emphasize a Board's duty to ensure management consistently conducts internal audits and responds appropriately to identify noncompliance through corrective action plans and continued monitoring.

Health Care Compliance Expert.

Boards are encouraged to either add a health care compliance expert to the Board, or regularly consult with such an expert, as this "sends a strong message about the organization's commitment to compliance."

Roles and Relationships Defined.

The structure, roles, responsibilities, and reporting relationships within corporate departments such as internal audit, compliance, legal, quality, risk management, and human resources, and the interactions between these functions, should be clearly defined in organizational documents, and it is the Board's responsibility to regularly evaluate each function's effectiveness.

Separate Compliance Officer and Legal Counsel.

Notably, the Guidelines reemphasize previous guidance that an organization's compliance, internal audit, and legal functions should be separate and independent of each other, and an organization's Compliance Officer should not be subordinate to legal counsel.

Departments with Key Compliance Functions Regularly Report to the Board.

Departments with key compliance functions should regularly provide separate and independent updates to the Board related to risk mitigation, compliance efforts, and implementation of corrective action plans. The Guidelines encourage Boards to hold regular "executive sessions" with leadership in departments with key compliance functions (excluding senior management) to encourage and maintain open communication between the Board and such departments.

Potential Risk Areas.

The Guidelines specifically point out areas of high regulatory risk for health care organizations, including referral relationships, quality of care issues, privacy breaches, and noncompliance with billing rules, such as upcoding and submitting claims for medically unnecessary services or services not rendered. The Guidelines also discuss the importance of keeping abreast of new compliance risks that accompany recent and evolving industry trends and regularly assessing and monitoring organizational risk and compliance in the face of such constant change.

Encouraging Corporate Compliance Culture.

The Guidelines recommend Boards implement and support a culture of corporate compliance across the organization through measuring and incentivizing meeting concrete compliance goals and objectives. In addition, Boards should assess whether their organization's compliance culture encourages employees to raise compliance concerns without fear of retribution and evaluate whether management appropriately responds to identified compliance violations.

CONCLUSION

In sum, the Guidelines re-emphasize the important role that Boards play in overseeing corporate compliance and demonstrate the government's interest in ensuring that Boards are actively engaged in their oversight role.

Governing Boards of health care organizations should review the Guidelines in light of their current operations and consider implementing changes, as indicated.

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