

OIG: Practical Guidance for Health Care Governing Boards on Compliance Oversight

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▶ “A Critical Element of Effective oversight is the process of asking the right questions.”

Board Expectations in Relation to the Compliance Program: What are the Right Questions?

- ▶ Does a reporting system exist, is it adequate and is it working?
- ▶ What benchmarks are being used as assessment tools to measure compliance program effectiveness?
- ▶ Are annual resolutions required by our Board?
- ▶ Is the scope and adequacy of our compliance program relative to the size and complexity of our organization?
- ▶ What plan is in place to keep the Board updated on the regulatory landscape?

Does a Reporting System Exist, is it Adequate and is it Working?

- ▶ The OIG stresses that having an effective reporting system is a key compliance element.
- ▶ The Board should have a clear understanding of the reporting system.
- ▶ The Compliance Officer should discuss reporting formats with the Board: Know what the Board wants and needs.
 - ▶ Internal vs. External reporting systems
- ▶ Compliance Officers should be sure the information is provided to the Board in a timely manner.

What Benchmarks are Being Used as Assessment Tools to Measure Compliance Program Effectiveness?

- ▶ Federal Sentencing Guidelines
 - ▶ Incentives for effectiveness
- ▶ OIG's Voluntary Compliance Program Documents
 - ▶ Guides organizations in developing effective compliance programs
- ▶ Corporate Integrity Agreements (CIA)
 - ▶ Helps an organization in identifying potential risk areas
 - ▶ Review organizations that are similar
- ▶ Benchmarking against oneself

Are Annual Resolutions Required by our Board?

- ▶ Many CIAs require annual board resolutions.
- ▶ Resolutions are signed by Board members and/or Board committees.
- ▶ The resolution should refer to the oversight of the compliance program.
- ▶ Best Practice: Have Board members attest to compliance training.

Is the Scope and Adequacy of our Compliance Program Relative to the Size and Complexity of our Organization?

- ▶ Compliance Programs are not a one size fits all.
- ▶ Guidelines allow for variation, depending on the size and complexity of the organization.
- ▶ Complexity of the organization will dictate the necessary structure of the compliance program.
- ▶ Small organizations: Usually less complex, less formality, fewer resources and responsibilities carried out by available staff.
- ▶ Boards of smaller organizations are usually involved to a greater degree.

What Plan is in Place to Keep the Board Updated on the Regulatory Landscape?

- ▶ A formal plan should be developed.
- ▶ Know who is going to be responsible for the updates.
- ▶ Compliance Officers should attend board meetings.
- ▶ Board members may need to take outside education to develop a better understanding of compliance, industry risk, regulatory requirements and the components of an effective compliance program.
- ▶ Boards should consider appointing a compliance expert to the Board.

The Structure: Roles and Relationships

- ▶ The Compliance Function
- ▶ The Legal Function
- ▶ The Internal Audit Function
- ▶ The Human Resource Function
- ▶ The Quality Improvement Function

- ▶ Define the interrelationships in charters and other organizational documents
- ▶ Cooperation and collaboration
- ▶ Boards should evaluate the compliance program structure

The Compliance Function

- ▶ Is an operational function
- ▶ Must be independent
- ▶ Prevent, detect and deter non-compliance
- ▶ Assist in compliance policy development
- ▶ Develop incentives to promote compliance
- ▶ Develop compliance work plans
- ▶ Develop effectiveness measures
- ▶ Work with management to develop corrective action plans and then ongoing monitoring
- ▶ Develop reports for management and board
- ▶ Conduct investigations
- ▶ Assure sanction checks are conducted
- ▶ Assure all seven elements are in place and working

The Legal Function

- ▶ Advises the organization on the legal and regulatory risks of its business strategies
- ▶ Provides advice and counsel to management and the Board
- ▶ Defends the organization in legal proceedings
- ▶ Initiates legal proceedings against other parties
- ▶ Collaborates with the compliance officer
- ▶ Evokes attorney-client privilege
- ▶ Is considered a management function
- ▶ Conflicts arise when the legal function is/oversees the compliance function

The Internal Audit Function

- ▶ Provides an objective evaluation of the existing risk and internal controls
- ▶ Ensures monitoring functions are working as intended
- ▶ Identify where management monitoring and/or additional oversight is needed
- ▶ Helps management enhance internal controls, reduce risk and promote efficient use of resources.
- ▶ Internal audit can fulfill the auditing requirements of the Guidelines if they have the skill set.
- ▶ Internal audits involvement does not exempt compliance from being engaged in the process and the outcomes.
- ▶ An internal audit representative should be on the Oversight Committee.

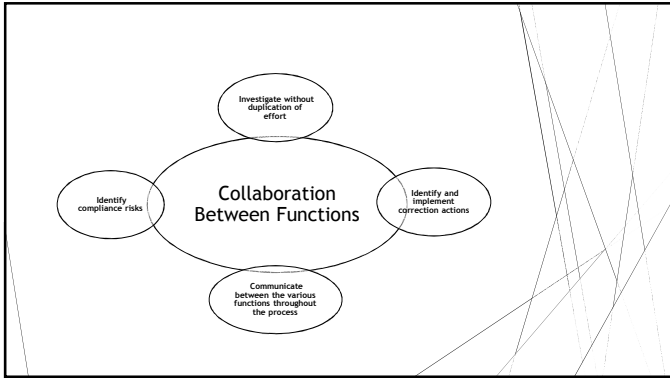
The HR Function

- ▶ Manages recruiting and hiring
- ▶ Conducts employee screening
- ▶ Conducts employee sanction checks, compliance should monitor the process
- ▶ Coordinates employee benefits
- ▶ Can be involved in the education and training of employees
- ▶ If HR develops compliance education and training, compliance should be involved in the design and assignment
- ▶ Can be part of the compliance investigative team
- ▶ Partner with compliance and management regarding disciplinary actions
- ▶ Many hotlines calls are HR related, compliance should monitor until resolution

The Quality Improvement Function

- ▶ Promotes consistent, safe and high quality practices
- ▶ Improves efficiency and health outcomes by measuring and reporting on quality outcomes
- ▶ Recommends necessary changes to clinical processes to management and Board
- ▶ Helps the organization minimize patient harm
- ▶ Is a partner with compliance and risk
- ▶ Can be a part of the investigative team

▶ “OIG believes an organization’s Compliance Officer should neither be counsel for the provider, nor be subordinate in function or position to counsel or the legal department, in any matter.”



Reporting to the Board

- ▶ Management reports should be independent from compliance
- ▶ Compliance reports
 - ▶ Objective scorecards
 - ▶ Internal and external investigations
 - ▶ Serious issues raised during audits
 - ▶ Hotline call activity
 - ▶ Allegations of material fraud
 - ▶ Sr. management misconduct

Know What the Board Wants

- ▶ Discuss with the Board the format and frequency for reporting
 - ▶ Dashboards
 - ▶ Balance too much and too little information
 - ▶ Timely reporting of suspected violations
 - ▶ A snapshot of where the organization is in regards to compliance
- ▶ Regular executive sessions
 - ▶ Open dialogue
 - ▶ Avoids suspicion

Boards Role in Identifying and Auditing Potential Risk Areas

- ▶ Boards Responsibility
 - ▶ Ensure that management and the Board have strong processes for identifying risk
 - ▶ Internal
 - ▶ External
 - ▶ Ensure that management consistently reviews and audits risk areas, as well as develops, implements, and monitors corrective action plans
 - ▶ Recent regulatory trends
 - ▶ New regulations
 - ▶ Compare data against peers
 - ▶ Understand how their organization is reviewing physician arrangements and what level of risk is acceptable in the arrangements
 - ▶ Be prepared to answer tough questions from stakeholders

Encouraging Accountability and Compliance

- ▶ Compliance is an enterprise-wide responsibility
- ▶ Employees should have defined incentive goals and objectives against which performance may be measured and incentivized
- ▶ Board should ask management about its efforts to develop policies and identifying and returning overpayments
- ▶ Proactive in self-disclosing to the government
- ▶ Assure there is good communication channels across the organization

Conclusion

- ▶ The Board should do the following
 - ▶ Make an effort to increase its knowledge of risks, how the organization handles the identified risks and the flow of reporting to Sr. Management
 - ▶ Encourage a level of accountability from everyone
 - ▶ Assure that the organization complies with relevant laws
