

**Reporting to the Board:
Maximizing Effectiveness**

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Overview

- Regulatory Considerations
- Reporting Requirements
- Managing Expectations

REGULATORY CONSIDERATIONS

Federal Sentencing Guidelines Section 8

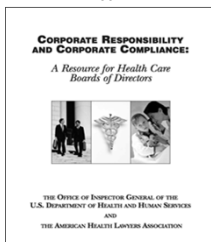
(4) (A) The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in subparagraph (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities.

(B) The individuals referred to in subparagraph (A) are the members of the governing authority, high-level personnel, substantial authority personnel, the organization's employees, and, as appropriate, the organization's agents.



OIG Guidance Resources

2004



2015



In re: Caremark Decision

(A): director's obligation includes a duty to attempt in good faith to assure that a corporation **information and reporting system**, which the Board concludes is adequate, exists, and the failure to do so under some circumstances, may, in theory at least **render a director liable for losses for noncompliance with applicable legal standards.**

Yates Memo - 2015



- Directs prosecutors to:
1. Focus on individuals when investigating allegations of corporate misconduct; and
 2. Hold individuals accountable in resolving criminal prosecutions and civil actions arising out of corporate misconduct.

REPORTING REQUIREMENTS

Effective Reporting

The OIG stresses that having an effective reporting system is a key compliance element.

- Define the reporting system;
- Develop consistent reporting formats;
- Determine Board's needs and wants related to reporting;
- Report issues in a timely manner; and
- Independent from management reports.

Effective Reporting Tools

- The Board should receive regular reports regarding the organization's risk mitigation and compliance program implementation efforts
- Other areas for reporting may include:
 - internal and external investigations
 - issues raised in internal/external audits
 - hotline call activity
 - allegations of fraud or senior management misconduct
 - significant regulatory changes
- Executive sessions should be conducted with leadership from the various functions on a routine basis

Risk Identification

- The Board should ensure that management has strong processes in place for identifying risk areas.
- Consistent reviews and audits for risk areas, as well as development, implementation, and monitoring to ensure corrective action plans are in place and are effective is imperative.
- Areas of particular interest include:
 - Referral relationships and arrangements
 - Billing problems (upcoding, submitting claims for which services were not rendered, medical necessity)
 - Privacy breaches

Board Agenda Compliance Program Reports

Education

- Current Events
- Published Regulatory Changes

Compliance Program Reports

- Special Project Report
- Active Compliance Projects
- Newly Identified Risk Areas

Action Items

- Policies And Procedures
- Resource Allocation

MANAGING EXPECTATIONS

Board Oversight of Compliance Function

- Ensure a corporate information and reporting system exists
- Validate that the reporting system is adequate to assure the Board that appropriate information relating to compliance with applicable laws will come to its attention timely as a matter of course
- Regular review of existing compliance systems and functions to ensure adequacy and effectiveness
- Periodically consult with an experienced regulatory, compliance, or legal professional to demonstrate organization's commitment to compliance

Board Accountability

- Have we received any recent negative communication from our regulators? (e.g., warning letters, notices of non compliance, negative audit results) If so, what is being done to address/remediate these issues?
- If we were to be audited by OIG/OCR/CMS/DOJ next month, would we pass the audit?
- What are the emerging compliance risks the organization is facing and what is the organization doing to address/mitigate these risks?
- How are you (as management) comfortable that the organization is currently in compliance? What data do you have to gain your comfort level?
- How is compliance woven into the organization's strategy? Are you getting the proper support from the rest of the organization?
- Have we had any significant whistleblower calls?

Summary

- Boards play a vital role in the effective of the organization's compliance program
- Level of involvement and commitment to the compliance program starts at the top
- Robustness of the compliance program mitigates risk, improves quality, and reduces financial exposure
