

# The Role of Health Care Directors in Compliance: A Practical Approach to Compliance Oversight and Responsibilities

*February 29, 2016*

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# Overview

- New OIG/AHHA Guidance
- Putting the Pieces Together
- Yates Memorandum – DOJ's Focus on Compliance
- OIG and other Board Governance Resources



# OIG Focus: Background on Boards

- Why is OIG focused on Boards of Directors?
  - Exercise decision-making power
    - Budget
    - Organizational priorities
  - Influence on corporate culture
    - Focus on compliance
  - Legally liable for actions of the corporation
    - Increasing focus on holding individual actors liable for corporate acts
    - DOJ Memorandum on Individual Prosecutions



# Quick Look: New OIG/AHLA Guidance

- Reviews role of corporate Boards of Directors in compliance oversight
  - Contemplates an active and involved Board
- Addresses:
  - Interrelationship of audit, compliance, and legal functions
  - Reporting to Boards
  - Identifying and Auditing Potential Risk Areas
  - Encouraging Accountability and Compliance



# Roles and Responsibilities

- Separate, yet integrated, roles of compliance, legal, internal audit, human resources, and quality improvement.
- OIG stresses the importance of independence – but need for collaboration is clear.
- Guidance recognizes that not all organizations have sufficient resources for separation of functions.
- Boards should evaluate adequacy of independence periodically.



# Reporting to the Board

- Set expectations for receiving compliance related information from management – Board has an ongoing responsibility to be informed.
- Objective scorecards – executing the compliance program
- Internal and external investigations
- Issues raised in internal and external audits
- Hotline call activity
- Allegations of material fraud or management misconduct
- Significant legal or regulatory changes
- Government enforcement



# Identifying and Auditing Potential Risk

- Monitor areas of risk for fraud:
  - Referral relationships and arrangements
  - Billing abnormalities (upcoding, submitting claims for medically unnecessary services, etc.)
  - Privacy and security concerns
  - Quality related events
- Develop a risk assessment plan that incorporates industry trends
  - Availability of data: outcomes, quality measures, payment
  - New reimbursement models (bundled payments, global payments, value based payments)



# Accountability and Compliance

- Enterprise-wide responsibility
  - **Compliance is a Way of Life**
- Assess performance on compliance functions and provide incentives/penalties
- Encourage self-identification of issues and self-reporting to the government (60 day rule)
- Encourage effective communication across the organization without fear of retaliation or retribution





# Putting the Pieces Together

- **Function 1: Know the Organization**
  - Small organizations
    - Compliance mechanisms may be less formal, but expectation of Board involvement is higher
  - Larger organizations
    - The larger the organization, the better-defined different roles should be
      - Compliance vs. legal vs. audit: each has independent roles
- Task: “Be aware of and evaluate the adequacy, independence, and performance of different functions”



# Putting the Pieces Together

- **Function 2: Know the Industry**
  - Utilize internal and external expertise
    - Possibility: add a compliance expert to the Board
  - Know enough to know:
    - Are we aware of the risks facing our facilit(ies)?
    - Do we understand the information that is being presented to us?
  - **Task: “Develop a formal plan to stay abreast of the ever-changing regulatory landscape and operating environment”**



# Putting the Pieces Together

- **Function 3: Identify New Risks**
  - Identify new areas of focus
    - Recent settlements
    - New payment models
  - Ensure that the auditing process and infrastructure are sufficient to identify possible problems
- **Task: “Ensure that management consistently reviews and audits risk areas, as well as develops, implements, and monitors corrective action plans.”**



# Putting the Pieces Together

- **Function 4: Ask the Right Questions/Get the Right Information**
  - Boards aren't just evaluating risk—they are evaluating capacity to detect and manage risk
  - Information should come from multiple sources
    - Dashboards: how are facilities performing?
    - Routine executive sessions with non-senior managers and compliance personnel
      - Is the system functioning as it should?



# Putting the Pieces Together

- **Task: Evaluate the compliance operation**
  - **Does it adequately identify risk?**
  - **Are identified problems investigated properly?**
  - **Is the corrective action appropriate to the problems identified?**
  - **Is communication adequate among managers and staff?  
Does needed training occur?**



# Putting the Pieces Together

- **Function 5: Encourage Accountability**
  - Create incentives for compliant behavior
    - Financial incentives for compliance
    - Claw-backs for failures
  - Encourage identification of potential issues
  - Monitor how management handles self-identified violations
- **Task: “Build compliance programs that encourage self-identification of compliance failures and voluntarily disclose such failures to the Government.”**



## In the News ...

### Health Industry **Washington Watch**

Updates by Reed Smith on U.S. legislative & regulatory developments affecting the life science & health care industry sector

## Yates Memo Promises to be a Game-Changer for Health Care Executives



By Debra

Posted in DOJ Develo

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#### LAWFLASH

## DOJ FRAUD SECTION RETAINS HUI CHEN AS COMPLIANCE COUNSEL EXPERT

November 03, 2015

Chen brings important industry experience to the role.



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# Yates Memorandum

- Memo authored by Deputy Attorney General Sally Quillian Yates
- Released by the Department of Justice on September 9, 2015
- Addressed to Assistant Attorney Generals, Director FBI and all US Attorneys
- Subject : Individual Accountability for Corporate Wrongdoing

*“ One of the most effective ways to combat corporate misconduct is by seeking accountability from the individuals who perpetrated the wrongdoing. Such accountability is important for several reasons; it deters future illegal activity, it incentivizes change in future corporate behavior, it ensures that proper parties are held responsible for their actions, and it promotes the public’s confidence in our justice system.”*

*Excerpt from Yates memo*



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# Evaluation of Corporate Compliance Program

- As of November 3, 2015 DOJ Fraud Section has retained full-time counsel to serve as a compliance expert.
- Duties include:
  - Assessing the compliance programs of companies under investigation
  - Guide the Fraud Section prosecutors when they are seeking remedial compliance measures as part of a resolution with a company

According to Assistant Attorney General, Leslie Caldwell, the DOJ's "hiring of compliance counsel should be an indication to companies about just how seriously we take compliance"



# Board Governance Resources

- U.S. Sentencing Guidelines, Ch. 8
  - “The Seven Elements of an Effective Compliance Program”
  - Provides for leniency in criminal sentencing
- OIG Compliance Guidance
  - Sets forth health care-specific expectations
  - Identifies provider-specific risk areas
- CIAs
  - Approaches to remediating compliance breakdowns



# OIG Board Governance Resources

- 2003: Corporate Compliance and Corporate Responsibility
- 2004: An Integrated Approach to Corporate Compliance
- 2007: Corporate Responsibility and Health Care Quality
- 2008: Dashboards (long term care, acute care, tools for Boards to evaluate compliance programs)
- <http://oig.hhs.gov/>



The End

QUESTIONS??



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