OIG Governing Board Guidance on Compliance Oversight

NJHFMA Meeting
March 8, 2016
Tom Flynn, FACHE
VP/Chief Compliance Officer
Hackensack University Health Network

Hackensack University Health Network
HackensackUMC
HackensackUMC at Palisades
HackensackUMC at Pascack Valley
HackensackUMC at Mountainside
Hackensack University Medical Group

Hackensack University Medical Center
775 bed acute care teaching hospital; designated children’s hospital; regional perinatal center;
level II Trauma Center
44,009 inpatient admissions
432,135 outpatient visits
117,150 ED visits
6708 FTEs
1,561 medical staff members

Teaching Affiliate of Rutgers Medical School,
Georgetown School of Medicine
BJ Welsh, CHC, FHFMA
VP/Chief Compliance Officer
Saint Peter’s Healthcare System

Saint Peter’s Healthcare System, New Brunswick, NJ
Saint Peter’s University Hospital
CARES Surgicenter
Saint Peter’s Physician Associates, NJ
Saint Peter’s Foundation

Saint Peter’s University Hospital, New Brunswick, NJ
478-bed acute care teaching hospital with a designated acute care children’s hospital and regional perinatal center
> 30,000 inpatient admissions
> 200,000 outpatient visits
> 60,000 ED visits
~ 2,800 FTEs including employed providers
~ 1,140 medical staff members
Regional Medical Campus of Rutgers
WANL - Disclaimer
We Are Not Lawyers

Even if we WERE lawyers, we’re not YOUR lawyers

Ergo, this is not Legal Advice
Learning Objectives

• Evaluate Compliance Program Structure Beyond the Seven Elements
• Assure Your Risk Assessment Includes Both Traditional Focus and Evolving Areas of Risk
• Validate that the Scope of Your Program Matches the Complexity of Your Organization
• Define the Relationships Essential to an Effective Program
• Understand the Need for Interdependence with GC, IA, HR and QI.
• Understand Expectations for Board Reporting, including Objective Scorecards, Internal/External Benchmarks, Monitoring of Corrective Actions and Mechanisms for Accountability
Previous OIG/AHLA Guidance

• 2003 - Corporate Responsibility and Corporate Compliance: A Resource for Health Care Boards of Directors

• 2004 - An Integrated Approach to Corporate Compliance: A Resource for Health Care Organization Boards of Directors

• 2007 - Corporate Responsibility and Health Care Quality: A Resource for Health Care Boards of Directors

The Consistent Message? Healthcare boards need to be fully engaged in their responsibility for oversight of compliance.
Corporate Responsibility and Corporate Compliance (2003)

• Duty of Care Discussion
  – “Good Faith”
  – “Reasonable Inquiry”
  – “Best Interest of the Organization”

• Structural Questions
  – Program Structure
  – Risk Assessment Methodology
  – Resources

• Operational Questions
  – Inquiry into Program Effectiveness
  – Based on the Seven Elements

• Discusses the Roles of General Counsel and Chief Compliance Officer
• “It Doesn’t Take a Pig Farmer from Iowa to Smell the Stench of Conflict in that Relationship” – Grassley to Tenet
• Board Considerations for Each of 3 GC/CCO Relationship Models
Corporate Responsibility and Health Care Quality (2007)

• Revisits Board Duty of Care in Context of Quality of Care & Patient Safety Oversight
• Duty of Obedience to Corporate Mission
• Board Inquiry re: How the Organization Provides Care that is Safe, Effective, Patient-Centered, Timely, Efficient and Equitable
“A critical element of effective oversight is the process of asking the right questions of management to determine the adequacy and effectiveness of the organization’s compliance program, as well as the performance of those who develop and execute that program, and to make compliance a responsibility for all levels of management.”
Expectations for Board Oversight

- An effective corporate information and reporting system
- Use of public resources as benchmarks
  - Federal sentencing Guidelines
  - OIG Voluntary Compliance Program guidance
  - Published CIA and other settlements
- Assessment of the scope and adequacy of the compliance program as compared to the size and complexity of the entity.
Expectations for Board Oversight

- Establish Board competency related to the regulatory environment
- Understanding of regulatory risk
- Participation in outside educational programs
- Use of experts
  - External experts to advise the board
  - Appointed members of the board that serve as internal experts
CIA Board Obligations

• Board Compliance Committee to Meet Quarterly to Review the Program
• Hold C-Suite Executives Accountable via Attestations
• Engagement of Board Compliance Expert
• Annual Board Resolution
“The Board of Directors has made reasonable inquiry into the operation of ABC Healthcare’s Compliance Program, including the performance of the Compliance Officer and the Compliance Committee. Based on its inquiry and review, the Board has concluded that, to the best of its knowledge, ABC has implemented an effective Compliance Program to meet Federal health care program requirements and the obligations of the CIA.”
Roles and Relationships

“Organizations should define the interrelationship of the audit, compliance and legal functions…”

• The **compliance function** promotes the prevention, detection, and resolution of actions that do not conform to legal, policy, or business standards.

• The **legal function** advises the organization on the legal and regulatory risks of its business strategies, providing advice and counsel to management and the Board about relevant laws and regulations that govern, relate to, or impact the organization.

• The **internal audit function** provides an objective evaluation of the existing risk and internal control systems and framework within an organization.
Roles and Relationships

Boards should be aware of, and evaluate, the adequacy, independence, and performance of different functions within an organization on a periodic basis. 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 manner. While independent, an organization’s counsel and compliance officer should collaborate to further the interests of the organization.
Roles and Relationships

- The **human resources** function manages the recruiting, screening, and hiring of employees and provides employee training and development opportunities.
- The **quality improvement** function promotes consistent, safe, and high quality practices within health care organizations. This function improves efficiency and health outcomes by measuring and reporting on quality outcomes and recommends necessary changes to clinical processes to management and the Board.

Boards should be aware of, and evaluate, the adequacy, independence, and performance of different functions within an organization on a periodic basis.
Roles and Relationships

Boards should also evaluate and discuss how management works together to address risk, including the role of each in:

• identifying compliance risks,
• investigating compliance risks and avoiding duplication of effort,
• identifying and implementing appropriate corrective actions and decision-making, and
• communicating between the various functions throughout the process.
Board Reporting

The Board should receive regular reports regarding the organization’s risk mitigation and compliance efforts, separately and independently, from a variety of key players, including those responsible for audit, compliance, human resources, legal, quality, and information technology.

- Use of objective scorecards that measure program execution, mitigation of risk and implementation of corrective action.
- Reports on internal and external investigations
- Hotline call activity
- Allegations of material fraud or misconduct
- Management exceptions to the code of conduct
- Assessment of significant, relevant regulatory changes
- Regular executive sessions
Infrastructure Progress by Program Element

- Written Standards
  - Designation of Compliance Officer and a Compliance Committee
  - Training and Education
- Communication Systems
- Enforcement
- Auditing and Monitoring

Key Statistics

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<thead>
<tr>
<th>FTEs</th>
<th>Current</th>
<th>Target</th>
<th>Difference</th>
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<tr>
<td>Total</td>
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<table>
<thead>
<tr>
<th>Recurring Costs</th>
<th>Current</th>
<th>Target</th>
<th>Difference</th>
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<tbody>
<tr>
<td>Salary</td>
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<tr>
<td>Non-Salary</td>
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<td>Total</td>
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Key Accomplishments Since Last Report

- Bulleted key points/updates from last report, to begin at second report out of dashboard
- XX

Overall Progress Towards Milestones

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<thead>
<tr>
<th>Percent Complete</th>
<th>Overall Status</th>
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Key Reportable Metrics

<table>
<thead>
<tr>
<th>Element</th>
<th>Activity</th>
<th>Final Assessment Completion</th>
<th>Average Assessment Score</th>
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</thead>
<tbody>
<tr>
<td>Training and Education</td>
<td>Commercial Compliance Training</td>
<td>XX% Complete</td>
<td>XX%</td>
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Emerging/Potential Risks Since Last Report

- Top Compliance Stories in the News
- XX

Hotline Call Activity

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<tr>
<th>Hotline Call Activity</th>
<th>Open</th>
<th>Closed</th>
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<td>Substantiated</td>
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<td>Unsubstantiated</td>
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<tr>
<td>Total</td>
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## Key Milestones as of QQ/YY

<table>
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<tr>
<th>Element</th>
<th>Key Milestones</th>
<th>Milestone Date</th>
<th>Status as of QQ/YY</th>
<th>% Complete</th>
<th>Notes</th>
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<tr>
<td>Written Standards</td>
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<tr>
<td>Designation of Compliance Officer and a Compliance Committee</td>
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<tr>
<td>Conducting Effective Training and Education</td>
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<td>Communication Lines to the Compliance Officer</td>
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<td>Enforcing Standards through Well-Publicized Disciplinary Guidelines</td>
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<td>Auditing and Monitoring</td>
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<tr>
<td>Responding to Detected Offenses and Developing Corrective Action</td>
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### Oversight

In this section, discuss personnel changes in the Compliance department, new hires and their qualifications, open positions, new resources requested, awards won, milestones achieved, anything that speaks to the fact that the compliance program is overseen by qualified professionals who know what they are doing.

This is also a good place to speak to the Board Audit & Compliance Committee about changes you recommend at the Board level.

### Policies and Procedures

List the policies and procedures that you have developed during this reporting period.

Attach copies of policies if they are brand new or substantively revised or have wide-ranging impact on the organization.

Let the Board know about policies that are currently under review as well, so they have an opportunity to weigh in early, as appropriate.

### Reporting, Investigation and Remediation

**Compliance Hotline**

Hotline report attached. Investigations, findings and corrective actions

**Other Investigations**

Not every investigation originates from a hotline call. This is the place to discuss investigations that arose from routine monitoring, or from outside the organization.

This is also a good place to talk about HIPAA privacy and security events.
Auditing and Monitoring

Sanctions Screening
Routine sanctions screenings against OIG, GSA, etc. and reportable findings.

Internal Audits and Monitors - The following areas were monitored intradepartmentally, or audited by the Compliance department, during this reporting period:

Physician Documentation/Coding Audits can be listed by physician, department, and specialty. Give percentages and trends.

Fleshing out this section is key because the OIG loves to see robust auditing and monitoring programs in place.

Anything exciting happen this quarter with PEPPER? Novitas? Talk about it here.

Which of the high-risk DRGs did the department look at during this reporting period?

External Audits
Did you receive any letters from government agencies this reporting period? HRSA, OCR, FDA, OSHA, OIG? Subpoenas? This is the replace to provide a narrative.
| Education and Training | The Compliance department engaged in the following training initiatives during the reporting period:  
  
  • How many new hires received Compliance training this quarter?  
  • Did you provide any department-specific training?  
  • Was education provided as follow-up on any of the audits you listed above?  
  • Did the Compliance department distribute compliance news to specific departments?  
  • Talk here about one on one, or OTJ training provided to physicians and/or staff  
  • Did you attend any departmental meetings to refresh on old compliance topics?  

| Other | Everything that doesn’t fit neatly into any of the other categories can be discussed here. Did you conduct an effectiveness survey? Is it Conflict of Interest reporting time?  

Submitted By: Bozo the Clown, VP/Chief Compliance Officer
Identification and Auditing of Risk Areas

Some regulatory risk areas are common to all health care providers. Compliance in health care requires monitoring of activities that are highly vulnerable to fraud or other violations. Areas of particular interest include:

- referral relationships and arrangements,
- billing problems (upcoding, submitting claims for services not rendered and/or medically unnecessary services),
- privacy breaches, and
- quality-related events.
Identification and Auditing of Risk Areas

Management and the board must have strong processes for identifying risk areas and prioritizing within the organization.

Internal sources – audit reports, the compliance hotline, management requests or employee reports

External sources – professional publications, OIG issued guidance (work plan, advisory opinions, audit reports), consultants, competitors or news media.

The board should assure that management reviews and monitors risk areas and develops, implements and monitors corrective action.
Identification and Auditing of Risk Areas

• Risk identification should take into account the increasing emphasis on quality, industry consolidation, and changes in insurance coverage and reimbursement.

• New forms of reimbursement lead to new incentives and compliance risks (e.g., value-based purchasing, bundling of services for a single payment, and global payments for individual and population health).

• Boards should assure that financial relationships with referral sources or program recipients are reviewed and that these arrangements are compliant with the physician self-referral (Stark) and anti-kickback laws.
Encouraging Accountability

Compliance is an enterprise-wide responsibility. While audit, compliance, and legal functions serve as advisors, evaluators, identifiers, and monitors of risk and compliance, it is the responsibility of the entire organization to execute the compliance program.

• Assure an assessment of employee performance in promoting and adhering to compliance.

• Evaluate whether compliance systems and processes encourage effective communication across the organization and whether employees feel confident that raising compliance concerns, questions, or complaints will result in meaningful inquiry without retaliation or retribution.
Encouraging Accountability

At the entity level there are regulatory incentives to build compliance programs, encourage self identification of lapses and voluntarily disclose those lapses.

- Assess how management addresses identification of probable violations, including voluntary self disclosure.

- Ask whether the 60-Day Rule has been translated into operational policy and procedure.
“A health care governing Board should make efforts to increase its knowledge of relevant and emerging regulatory risks, the role and functioning of the organization’s compliance program in the face of those risks, and the flow and elevation of reporting of potential issues and problems to senior management.

A Board may find that not every measure...is appropriate for its organization, but every Board is responsible for ensuring that its organization complies with relevant Federal, State, and local laws”
Questions?

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bjwelsh@saintpetersuh.com