

Compliance Round-Up

May 12, 2015

OIG Guidance for Governing Boards



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Continuing Goals

The goals of the Compliance Round-Up Webinars:

- Teaching/knowledge transfer
- Keep you up to date on compliance rules
- Practical points
- Assist organizations to develop in-house methods of managing
- Please share your thoughts, suggestions (and criticisms)



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Compliance Round-Up: Webinar Overview

Administrative Matters

- Monthly on the 2nd Tuesday of the month
- No charge! (feel free to spread the word....)
- Each session will be 60-75 minutes in duration
- Each session will begin at 12:00 PM CT
- If you are unable to participate in the live discussion, each session will be recorded and made available in MP3 format



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Today's Topics/Agenda

1. OIG Board Guidance



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OIG Board Guidance

- “Practical Guidance for Health Care Governing Boards on Compliance Oversight”
- Released April 20, 2015
 - <http://oig.hhs.gov/newsroom/news-releases/2015/guidance-release2015.asp>
- OIG developed guidance in collaboration with AHIA, HCCA and AHLA
- Note that OIG still maintains a more complex and longer 2011 Guidance:
 - “The Health Care Director’s Compliance Duties”
 - http://oig.hhs.gov/compliance/compliance-guidance/docs/Health_Care_Directors_Compliance_Duties.pdf



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OIG Board Guidance

- This discussion will highlight key quotes and then provide take-away points
- Structure of Guidance:
 1. Expectations for Board Oversight of Compliance Program Functions
 2. Reporting to the Board
 3. Identifying and Auditing Potential Risk Areas
 4. Encouraging Accountability and Compliance



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OIG Board Guidance

- Expectations for Board Oversight – key quote:

“A Board must act in good faith in the exercise of its oversight responsibility for its organization, including making inquiries to ensure:

- (1) a corporate information and reporting system exists and
- (2) the reporting system is adequate to assure the Board that appropriate information relating to compliance with applicable laws will come to its attention timely and as a matter of course.”



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OIG Board Guidance

- Expectations for Board Oversight

The Guidance discusses how Boards should use “benchmarks for their organizations.”

The most important “benchmarks” the document discusses are:

1. The Federal Sentencing Guidelines (effectiveness elements)
2. OIG Compliance Program Guidances (industry-specific)
3. OIG Corporate Integrity Agreements



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OIG Board Guidance

- Expectations for Board Oversight

OIG Corporate Integrity Agreements

- “CIAs impose specific structural and reporting requirements to promote compliance...OIG has required some settling entities...to agree to Board-level requires, including annual resolutions.”
- “These resolutions are signed by each member of the Board, or the designated Board committee, and detail the activities that have been undertaken to review and oversee the organization’s compliance with Federal health care program and CIA requirements.”



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OIG Board Guidance

- Expectations for Board Oversight

A controversial statement:

“Boards of smaller organizations may need to become more involved in the organizations’ compliance and ethics efforts than their larger counterparts.”



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OIG Board Guidance

- Expectations for Board Oversight

“Boards should develop a formal plan to stay abreast of the ever-changing regulatory landscape and operating environment. The plan may involve periodic updates from informed staff or review of regulatory resources made available to them by staff.”

“Board members may also wish to take advantage of outside educational programs that provide them with opportunities to develop a better understanding of industry risks, regulatory requirements, and how effective compliance and ethics programs operate. In addition, Boards may want management to create a formal education calendar that ensures that Board members are periodically educated on the organizations’ highest risks.”



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OIG Board Guidance

- Expectations for Board Oversight

“Finally, a Board can raise its level of substantive expertise with respect to regulatory and compliance matters by adding to the Board, or periodically consulting with, an experienced regulatory, compliance, or legal professional.”



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OIG Board Guidance

- Roles and Responsibilities

“Organizations should define the interrelationship of the audit, compliance, and legal functions in charters or other organizational documents. The structure, reporting relationships, and interaction of these and other functions (e.g., quality, risk management, and human resources) should be included as departmental roles and responsibilities are defined. One approach is for the charters to draw functional boundaries while also setting an expectation of cooperation and collaboration among those functions.”



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OIG Board Guidance

- Roles and Responsibilities

The OIG sets out proposed functions which should be defined (and understood by the Board) in order to be sure who does what:

1. Compliance function
2. Legal function
3. Internal audit function
4. Human resources function
5. Quality improvement function



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OIG Board Guidance

- Roles and Responsibilities

OIG definition of “Compliance Function”:

“The compliance function promotes the prevention, detection, and resolution of actions that do not conform to legal, policy, or business standards. This responsibility includes the obligation to develop policies and procedures that provide employees guidance, the creation of incentives to promote employee compliance, the development of plans to improve or sustain compliance, the development of metrics to measure execution (particularly by management) of the program and implementation of corrective actions, and the development of reports and dashboards that help management and the Board evaluate the effectiveness of the program.”



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OIG Board Guidance

- Roles and Responsibilities

Reporting Relationships

“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.”

“OIG’s position on separate compliance and legal functions reflects the independent roles and professional obligations of each function; the same is true for internal audit.”



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OIG Board Guidance

- Roles and Responsibilities

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

1. identifying compliance risks,
2. investigating compliance risks and avoiding duplication of effort,
3. identifying and implementing appropriate corrective actions and decision-making, and
4. communicating between the various functions throughout the process



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OIG Board Guidance

- Reporting to the Board

“The Board should set and enforce expectations for receiving particular types of compliance-related information from various members of management.

“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.”



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OIG Board Guidance

- Reporting to the Board

“The Board may request the development of objective scorecards that measure how well management is executing the compliance program, mitigating risks, and implementing corrective action plans. Expectations could also include reporting information on internal and external investigations, serious issues raised in internal and external audits, hotline call activity, all allegations of material fraud or senior management misconduct, and all management exceptions to the organization’s code of conduct and/or expense reimbursement policy.”



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OIG Board Guidance

- Reporting to the Board

“As part of its oversight responsibilities, the Board may want to consider conducting regular “executive sessions” (i.e., excluding senior management) with leadership from the compliance, legal, internal audit, and quality functions to encourage more open communication.”



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OIG Board Guidance

- Identifying and Auditing Potential Risk Areas

“The Board should ensure that management and the Board have strong processes for identifying risk areas.”

Boards should have an understanding of how risks are identified and the sources drawn upon.



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OIG Board Guidance

- Identifying and Auditing Potential Risk Areas

“In light of the fact that statutes applicable to provider-physician relationships are very broad, Boards of entities that have financial relationships with referral sources or recipients should ask how their organizations are reviewing these arrangements for compliance with the physician self-referral (Stark) and anti-kickback laws.”

“There should also be a clear understanding between the Board and management as to how the entity will approach and implement those relationships and what level of risk is acceptable in such arrangements.”



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OIG Board Guidance

- Encouraging Accountability and Compliance

“As an extension of their oversight of reporting mechanisms and structures, Boards would also be well served by evaluating whether compliance systems and processes encourage effective communication across the organizations and whether employees feel confident that raising compliance concerns, questions, or complaints will result in meaningful inquiry without retaliation or retribution.”

“Further, the Board should request and receive sufficient information to evaluate the appropriateness of management’s responses to identified violations of the organization’s policies or Federal or State laws.”



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OIG Guidance – Takeaway Points

1. Expectation of active involvement in oversight of substance and program – much higher expectation of involvement than many boards are used to.
2. Board needs to stay abreast of understanding regulatory risk.
3. Important to document education efforts of Board.
4. Consider compliance expert for the Board.
5. Examine functions and independence.
6. Establish regular risk-based reports to the Board.
7. Have Board approve annual audit plan.
8. Board should understand how Stark/AKS are being managed for financial arrangements with referral sources.
9. Reports on corrective action compliance should be provided to the Board.
10. Board should assess compliance program at least annually.



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Follow-Up

Questions?

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Next Lecture:

Tuesday, June 9, 2015



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