

## Guidance Published for Health Care Governing Boards

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On April 20, 2015, the Office of the Inspector General of the United States Department of Health and Human Services (HHS OIG), in collaboration with the Association of Healthcare Internal Auditors, American Health Lawyers Association and the Health Care Compliance Association, issued a new guidance document entitled "[Practical Guidance for Health Care Governing Boards on Compliance Oversight](#)" (Guidance), to assist governing boards of health care organizations (Boards) to carry out their oversight responsibilities. This cross-disciplinary authorship highlights the complementary roles of the internal audit, compliance and legal functions in any comprehensive compliance program. The Guidance seeks to provide practical tips that Boards may consider implementing in their organizations as they work to effectuate their oversight roles of their organizations' compliance with state and federal laws that regulate the health care industry.

The Guidance discusses health care organizations' obligations to comply with various federal and state regulations, as well as how to identify and avoid kickbacks, overbilling and other instances of noncompliance that can lead to civil and criminal penalties. The Guidance suggests diverse tools and tips that Boards of varied sizes and resources may use, including processes for identifying risks, tools for improving adherence to program objectives and effective reporting tools for Board meetings. In particular, the Guidance addresses several issues, including the following:

- Roles of, and relationships between, the organization's audit, compliance and legal departments;
- Mechanism and process for issue-reporting within an organization;
- Approach to identifying regulatory risk; and
- Methods of encouraging enterprise-wide accountability for achievement of compliance goals and objectives.



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## **Summary of Guidance**

### **Roles and Relationships**

The Board should review and consider the multiple relationships within its organization to ensure that department roles and responsibilities have been adopted and documents are in place that outline the structure, reporting relationships and interactions of these departments and responsibilities. As the Guidance frequently repeats, compliance is an organization-wide function, not the function of a single department. Further, the Guidance specifically discusses the interrelationship of the audit, compliance and legal functions within an organization, recognizing that an organization's exact structure may depend on its size and the resources available to it.

### **Reporting to the Board**

An effective compliance program should include a reporting structure that ensures the Board receives regular compliance and risk reports. The HHS OIG suggests the Board receive separate and independent reports from a variety of key individuals, including those responsible for audit, compliance, human resources, legal, quality and information technology. The compliance program should detail how the Board receives compliance-related information from management and develop a process to measure the effectiveness of management in executing and implementing the compliance program.

“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.” 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.

Further, the Guidance recommends Boards ensure there are appropriate mechanisms in place to require timely reporting of suspected violations and to evaluate and implement remedial measures. Many compliance issues in health care organizations, including the obligation to report and refund identified overpayments within 60 days of discovery, require the Board to take action in a timely manner.

### **Identifying Potential Risk Areas**

A number of areas unique to the health care industry require close monitoring (for example, referral relationships and arrangements, billing issues, privacy breaches and quality-related events). The Board must ensure that processes, including the evaluation of both internal and external information, are put into place to identify these risks, such as the use of compliance hotlines and internal audits. External sources including professional organization publications, OIG-issued guidance and news reports regarding the health care industry also should be reviewed and evaluated often. The Guidance specifically mentions the need for the Board to monitor new areas of risk, taking into account the increasing emphasis on quality, changes in insurance coverage and reimbursement and new forms of reimbursement (including value-based purchasing and bundled and global payments).

## **Encouraging Accountability and Compliance**

Further, the Board is responsible for assuring compliance *accountability across the organization*. Everyone within the organization is responsible for executing the compliance program, not just employees serving in audit, compliance or legal roles. Thus, the HHS OIG recommends the Board adopt “a system of defined compliance goals and objectives against which performance may be measured and incentivized” which communicates the message that everyone is responsible for compliance. The Guidance provides specific examples of how an organization can work to meet this goal, including instituting employee and executive compensation claw-back/recoupment provisions if certain compliance metrics are not met and making participation in incentive programs contingent on meeting annual compliance-focused goals.

While the OIG recognizes that compliance programs and Board oversight are not one-size-fits-all and that not every suggestion in the Guidance may be appropriate for every organization, Boards are expected to put forth “meaningful effort to review the adequacy of existing compliance systems and functions.” Regardless of the size of the organization, “every Board is responsible for ensuring that its organization complies with relevant Federal, State, and local laws.”

To read the complete Guidance, go to [Practical Guidance for Health Care Governing Boards on Compliance Oversight](#).

*If you have any questions regarding your Board’s obligations under law, or any other health or corporate law issues, please contact [Breanne M. Rubin](#) or [Kevin D. Devaney](#) or visit our web site [www.eastmansmith.com](http://www.eastmansmith.com).*

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