

2021 GOVERNANCE SUPPORT FORUM

MISSION CRITICAL: BOARDS' ROLE IN PROTECTING THEIR ORGANIZATION

Prepared for

GOVERNANCE INSTITUTE | SEPTEMBER 18-19, 2021
THE INTERCONTINENTAL SAN DIEGO, CA

PRESENTED BY: FLETCHER BROWN
waller



The Governance Institute®

A SERVICE OF **nrc**
HEALTH

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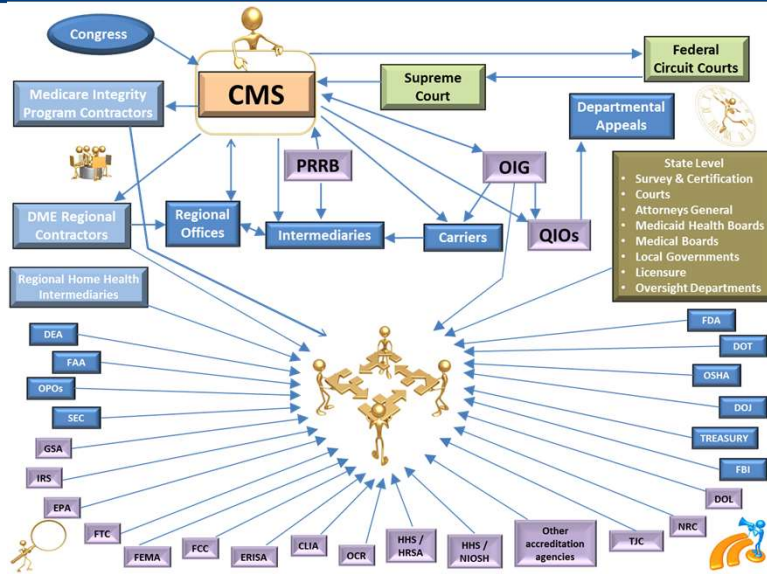
So, Today's Agenda:

- The History of Heightened Government Enforcement
- Growing Emphasis on Individual Liability in any job position
- Board's Role in Compliance and protecting the Organization
 - Awareness of DOJ enforcement
 - Awareness of HHS-OIG enforcement
 - Awareness of CMS enforcement
 - Use to steer your organization's compliance



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The Healthcare Industry: Its Highly Regulated!



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CLIA	Clinical Laboratory Improvement Amendments	GSA	General Service Administration
CMS	Centers for Medicare & Medicaid Services	HHS	Health & Human Services
DEA	Drug Enforcement Administration	HRSA	Health Resources & Services Administration
DME	Durable Medical Equipment	IRS	Internal Revenue Service
DOJ	Department of Justice	NIOSH	National Institute for Occupational Safety & Health
DOL	Department of Labor	NRC	Nuclear Regulatory Commission
DOT	Department of Transportation	OCR	Office for Civil Rights
EPA	Environmental Protection Agency	OIG	Office of Inspector General
ERISA	Employment Retirement Income Security Act	OPO	Organ Procurement Organization(s)
FAA	Federal Aviation Administration	OSHA	Occupational Safety & Health Administration
FBI	Federal Bureau of Investigation	PRRB	Provider Reimbursement Review Board
FCC	Federal Communications Commission	QIO	Quality Improvement Organizations
FDA	Food & Drug Administration	SEC	Securities & Exchange Commission
FEMA	Federal Emergency Management Agency	TJC	The Joint Commission
FTC	Federal Trade Commission		

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Large Annual Healthcare Spend

- In 2019 U.S. healthcare spending grew 4.6%, reaching \$3.8 trillion or \$11,582 per person, and was **17.7%** of US Gross Domestic Product.
- According to CMS, annual healthcare spending for 2028 is projected to exceed \$6.2 trillion, and account for **19.7%** of the GDP
- For 2019-28, health spending is projected to grow at an average rate of **5.4%** per year
- Federal, state and local government share of health expenditures to **increase to 47%** by 2028 (Source: CMS office of the Actuary, March 24, 2020)

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The Complexity Of Regulation

- If the 2020 U.S. regulatory costs of \$1.9 trillion were a country, it would be the world's **8th largest economy** behind Italy and ahead of Brazil. (Source: Commerce Dept., Bureau of Economic Analysis)
- **Federal Register:**
 - 2016 had 95,894 pages (highest in history)
 - 2017 had 61,308 pages (36% drop)
 - 2020 had 86,356 (2nd highest in history)
- At the end of 2020, there were **3,852** proposed rules in the Federal Register pipeline.



Source: Competitive Enterprise Institute, "Ten Thousand Commandments, an annual snapshot of the federal regulatory state, 2021."

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Heightened Enforcement: DOJ and HHS-OIG

Aggressive Government Enforcement Continues in Healthcare:

- Vigorous enforcement of healthcare fraud and abuse laws remains a top priority of HHS-OIG and the DOJ
- For FY 2020, DOJ and OIG jointly reported:
 - 990 criminal cases filed
 - 1,860 new civil actions; and
 - 2,148 exclusion actions
- Enforcement is not slowing down. The Federal Government investigative recoveries totaled **\$1.8 Billion for FY2020**.



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CMS: Heightened Enforcement Actions

- Medicare and Medicaid Contractor Audits
 - Zone Program Integrity Contractors (ZPICs)
 - Generally looking for purposeful fraud
 - Ability to initiate fraud investigations/refer matters to OIG
 - Risk of extrapolated overpayment, may withhold payment or place on pre-payment review
 - Recovery Audit Contractors (RACs)
 - Generally looking for overpayments
 - Typically random audits
 - RAC paid a % of recovery
 - Complicated Appeals Process
 - Other auditors include: Program Safeguard Contractors (PSCs), Medicaid Integrity Contractors (MICs), and Unified Program Integrity Contractors (UPICs).

THE GOVERNMENT IS WATCHING!!



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Penalties Can Be Assessed For UNINTENTIONAL Violations

- Companies have recently been fined or forced to reimburse Medicare and Medicaid millions of dollars for things like:
 - Failing to encrypt and properly secure devices with PHI on them (laptops, tablets, USB drives, smart phones);
 - Failing to use the most up-to-date forms;
 - Failing to properly document actions/evaluations of patients and medical necessity;
 - Simply failing to sign and date documents, contracts and agreements in a timely manner.

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Recent Government Action

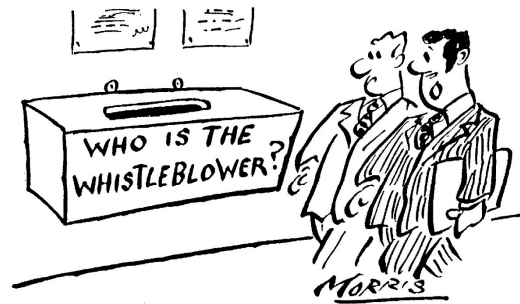
Texas: February 2017

- Children’s Medical Center of Dallas fined \$3.2 million over patient privacy breaches dating back to 2007
- Voluntary reported potential disclosures in 2010 of a Blackberry lost at DFW airport allowed unencrypted, non-password access to 3,800 patients’ information.
- Security analysis performed in 2007 had reported this gap to management, as did a separate report in 2008. **No action taken.**

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Whistleblowers: A Major Source Of Enforcement Information

The Rise of the Whistleblower

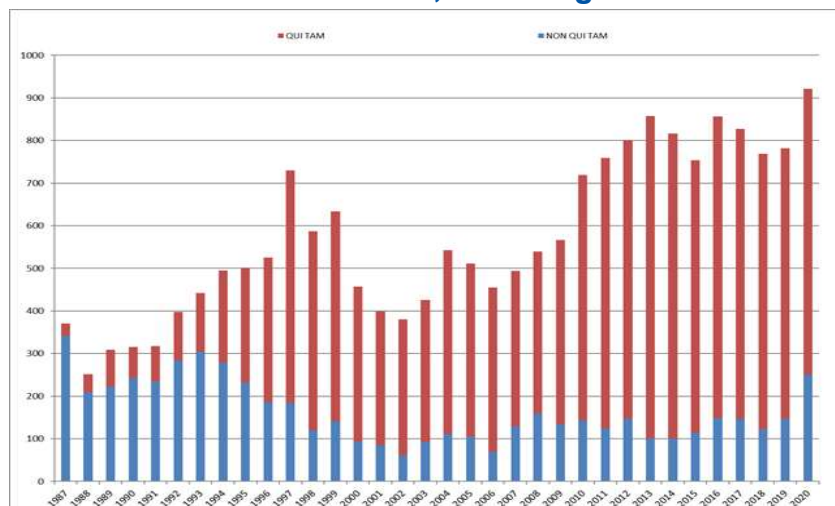


“Remember the good old days when it was a suggestion box?”

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The Rise (and Risk) of Whistleblowers

Number of FCA New Matters, Including Qui Tam Actions



Source: DOJ “Fraud Statistics – Overview” (Jan. 14, 2021)

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Why Are There More Whistleblowers Than Ever?

- Expansion of whistleblower protections under federal law
- Case law expanding protected activity and making retaliation claims more difficult to defend
- Government increasingly relying on whistleblowers as source for new cases
- False Claims Act creates a “bounty” for whistleblowers to recover a percentage of recovery - up to 30% of recovery
 - For 2020, DOJ reported that there were 672 Qui Tam suits filed - an average of **13 per week**.



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Recent Government Action - Started by a Whistleblower

Texas: December 2017

- Dallas Based EmCare, Inc:
- pays \$29.8 million to resolve False Claim Act Allegations
- 2008-2012, EmCare received payment from HMA (now defunct) to increase Medicare admissions at HMA hospitals by recommending admissions for patients who should have been billed as out patient or observation services. EmCare got bonus and contract renewed
- Whistleblowers (the former ER staffing company) received \$6.2 million of recovery

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September 2015: DOJ's Emphasis On Individuals

U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General Washington, D.C. 20530
September 9, 2015

MEMORANDUM FOR THE ASSISTANT ATTORNEY GENERAL, ANTITRUST DIVISION
THE ASSISTANT ATTORNEY GENERAL, CIVIL DIVISION
THE ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION
THE ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND
NATURAL RESOURCES DIVISION
THE ASSISTANT ATTORNEY GENERAL, NATIONAL
SECURITY DIVISION
THE ASSISTANT ATTORNEY GENERAL, TAX DIVISION
THE DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
THE DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES
TRUSTEES
ALL UNITED STATES ATTORNEYS

FROM: Sally Quillian Yates, Deputy Attorney General

SUBJECT: Individual Accountability for Corporate Wrongdoing

Fighting corporate fraud and other misconduct is a top priority of the Department of Justice. Our nation's economy depends on effective enforcement of the civil and criminal laws that protect our financial system and, by extension, all our citizens. These are principles that the Department lives and breathes—as evidenced by the many attorneys, agents, and support staff who have worked tirelessly on corporate investigations, particularly in the aftermath of the financial crisis.

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 changes in corporate behavior, it ensures that the proper parties are held responsible for their actions, and it promotes the public's confidence in our justice system.

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Yates Memo Guidance: 6 Key Points For Fed Prosecutors

1. Conditions eligible for cooperation credit on disclosure of what corporation knows about individual misconduct.
2. Focus on individual conduct from inception.
3. Communication between civil and criminal prosecutors.
4. Resolution with corporation will not provide liability relief for individuals.
5. Corporate cases should not be resolved before deciding how to resolve related individual cases.
6. Individual's ability to pay should not factor in determining whether to pursue civil actions against individuals.

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DOJ: Yates Memo

Significance:

Provides that in order for a corporation to receive “cooperation credit,” the corporation has to identify all individuals who had any involvement in the conduct at issue.



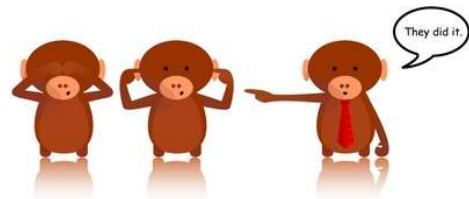
The Federal Sentencing Guidelines for Organizations

- “These guidelines offer incentives to organizations to reduce and ultimately eliminate criminal conduct by providing a structural foundation from which an organization *may self-police its own conduct through an effective compliance and ethics program*. The prevention and detection of criminal conduct, as facilitated by an effective compliance program, will assist an organization in encouraging ethical conduct and in complying fully with all applicable laws.”

- *U.S.S.C., Ch. 8, Sentencing of Organizations, Introductory Commentary (November 1, 2018).*

Personal Accountability

- Board Members and Officers of Health Care Organizations are responsible for:
 - Knowing and adhering to laws and regulations that affect the Organization.
 - Supervising the Compliance Program and policies and procedures.
 - Devoting sufficient resources to compliance.
 - Taking appropriate action when compliance problems are identified in the Organization.



November 2018 - DOJ: Justice Manual Revision

- Modifies Yates Memorandum
- Deputy Attorney General Rod Rosenstein revised policy for more lenient path for corporations to receive credit.
- Criminal Cases: Corporation **must** identify every individual substantially involved/responsible for misconduct, in order to receive maximum cooperation credit.
- Civil Cases: DOJ attorneys have discretion to reward cooperation, so in civil matters (FCA cases) corporations need “only” identify individuals (e.g., senior management and board of directors) who were “substantially involved”.

Implication of DOJ's November 2018 Revision:

1. Yates policy on individual liability remains.
2. Critical the Board demonstrate throughout the entity its support for the Compliance program and those who administer it (general counsel, chief compliance officer).
3. Board should remain aware of tension between senior executives and the board created by continued corporate credit emphasis on senior management . . . and Board Members.

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Yates Memo Takeaways For Compliance:

- For the corporation's workforce (executives/employed physicians) focused legal exposure remains for those who are risk-insensitive and who are inclined to push the edge of the legal/regulatory envelope with their style of work.
- Compliance program needs routine continued education on (a) regulatory requirements and (b) consequences for individuals who disregard rules/regulations.



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Individual Prosecution: CEO of Rural Texas Hospital

February 2019

- Palo Pinto General Hospital, Mineral Wells, Texas
- Public Hospital District
- Laboratory Service billed through hospital's NPI number
- 6 allergy/genetic testing invoices sent for non-hospital patients when hospital did not have equipment or performance service.
- Hospital paid back + \$8 Million

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Individual Prosecution: CEO of Rural Texas Hospital

- CEO charged in February 2019
- Sentenced in July 2019
 - 5 years probation
 - \$2.4 Million restitution
 - 250 hours community service
- CEO did not have personal gain from arrangement
- Exclusion

Case 4:19-cr-00034-A Document 36 Filed 07/05/19 Page 1 of 1 **FILED**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

July 5, 2019
KAREN MITCHELL
CLERK, U.S. DISTRICT COURT

HONORABLE: John McHyda, PRESIDING
DEPUTY CLERK: F. Arnold
LAW CLERK:
INTERPRETER:
AM 10:00
TOTAL COURT TIME: 53 min.

COURT REPORTER: Debbie Sienz
USPO: Angela French
DATE HELD: Friday, July 5, 2019
CSE: Ray Utten

Criminal No: 4:19-CR-034-A

UNITED STATES OF AMERICA § Megan J. Fahy, AUSA
v. §
§
HARRIS BROOKS § Jay Donald, Retained
Defendant's Name § Counsel By: Darl. Aggett-(A), Ret-(BA PFD-0)

SENTENCING

Hearing Type: Sentencing Hearing - Contested Sentencing Hearing - Non-Evidentiary
Trial Status: Completed by Jury Verdict Continued from Previous Month Directed Verdict Evidence Entered Hung Jury Jury Selection Only, continued Jury Selection or Verdict Only (No Trial Before this Judge) Mitrial Guilty Plea None

Days in Trial: _____

Hearing Concluded: Yes No

Sentencing Held. Objections to PSI heard. Plea agreement accepted. Plea agreement NOT accepted.

SENTENCING TEXT:

Deft. placed on: Probation for 5 years.
 Deft. committed to custody of the AG/BOP to be imprisoned for a TOTAL term of _____ months.
 Deft. placed on: Supervised Released for _____ years.
 Restitution ordered in the amount of \$2.4 million.
 Count(s) _____ dismissed on government's motion.
 Only distinguishing original Indictment information to be entered upon government's written motion.
 \$100 special assessment on Count(s) 1 of the Information.

Deft. ordered to surrender to U.S. Marshal on _____
 Deft. ordered to surrender to the designated institution on _____
 Deft. failed to appear, bench warrant to issue.
 Bond continued revised.
 Deft. Advised of his right to appeal.
 Deft. requests Clerk to enter notice of Appeal.
 Deft. Custody/Detention continued.
 Deft. ORDERED into custody. Court recommends incarceration at _____.

OTHER PROCEEDINGS/INFORMATION: Doc. No. 26 – Granted.

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February 2019: New England Pain Associates (Boston, MA)

- Physician provided pain management services and was the second highest prescriber of oxycodone in Massachusetts (behind only a hospital).
 - Falsely billed Medicare for services that he did not provide.
 - Prescribed pain medications without performing physical exams.
 - Lied in patient records about time spent per patient to maximize billings.
 - Performed unnecessary urine drug tests.
 - Falsified patient records after a Medicare audit.
- Result: **75 months in prison** and \$1,852,459 in restitution

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HHS-OIG: Maintaining and Measuring a High-Functioning Compliance Program:

February 1998:

1. While historically providers were encouraged to maintain effective compliance programs, there were few resources.
2. The OIG published a document commonly called the “Seven Elements of an Effective Compliance Plan.”

Federal Register / Vol. 63, No. 35 / Monday, February 23, 1998 / Notices 8889

represent a guide—a process that can be used by hospitals, large or small, urban or rural, for profit or not for profit. Moreover, the elements can be incorporated into the managerial structure of multi-hospital and managed care systems. As we stated in our initial advisory plan, these suggested guidelines can be adapted to fit the needs and financial realities of a particular hospital. The OIG is confident that with regard to compliance programs, one model is not suitable for every hospital. Nonetheless, the OIG believes that every hospital, regardless of size or structure, can benefit from the principles espoused in this guidance.

The OIG believes that every effective compliance program must begin with a formal commitment by the hospital's governing body to include all of the applicable elements listed below. These elements are based on the seven steps of the Federal Sentencing Guidelines.¹ Further, we believe that every hospital can implement most of the recommended elements that expand upon the seven steps of the Federal Sentencing Guidelines.² We recognize that full implementation of all elements may not be immediately feasible for all hospitals. However, as a first step, a good faith and meaningful commitment on the part of the hospital administration, especially the governing body and the CEO, will substantially contribute to a program's successful implementation.

All a minimum, comprehensive compliance programs should include the following:

(1) The development and dissemination of written policies and procedures that ensure the hospital's commitment to compliance (e.g., by including adherence to compliance in recruiting, hiring, and employment agreements);

(2) The development and dissemination of written policies and procedures that identify specific areas of compliance at the hospital. These policies should be developed under the direction and supervision of a chief compliance officer and compliance committee, and, as a minimum, should be provided to all individuals who are affected by the particular policy at issue, including the hospital's agents and independent contractors.

(3) The development of a system of internal controls designed to detect and prevent inappropriate activities and to ensure that compliance policies, applicable statutes, regulations or Federal health care program requirements or Federal health care program requirements to monitor compliance and report to the appropriate identified systemic problems and the development of policies, including the non-employment or termination of identified individuals.

A. Written Policies and Procedures

Every compliance program should require the development and dissemination of written compliance policies that identify specific areas of compliance at the hospital. These policies should be developed under the direction and supervision of a chief compliance officer and compliance committee, and, as a minimum, should be provided to all individuals who are affected by the particular policy at issue, including the hospital's agents and independent contractors.

B. Standards of Conduct

Hospitals should develop standards of conduct for all affected employees that include a clearly defined commitment to compliance by the hospital's senior management and its directors.

C. Training

The OIG strongly encourages high-level involvement by the hospital governing body and compliance officer, chief operating officer, general counsel, and chief financial officer, as well as other senior officials, in the development and implementation of standards of conduct. Such

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1998: The OIG's "Seven Elements"

1. Implementing written policies, procedures, and standards of conduct.
2. Designating a compliance officer and compliance committee.
3. Conducting effective training and education.
4. Developing effective communication lines to receive complaints and protect anonymity.
5. Conducting internal monitoring and auditing.
6. Enforcing standards through well-publicized disciplinary guidelines.
7. Responding promptly to detected offenses and undertaking corrective action.

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The OIG's "Seven Elements" (cont.)

- Essentially this guidance establishes a framework for a compliance program that, through the compliance officer, develops policies, receives complaints, monitors and audits conduct, and responds to compliance concerns.
- However, the seven elements do not address or provide guidance on measuring the effectiveness of a compliance program.



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Six Months Later:

August 1998:

- Shortly after publishing the seven elements, the OIG stated that: “[s]uperficial programs that simply purport to comply with the elements discussed and described in this guidance or programs that are hastily constructed and implemented without appropriate ongoing monitoring will likely be ineffective and could expose [providers’] to greater liability than no program at all.”

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So, Now . . . The OIG will:

- Going forward the OIG will focus more on what providers are actually doing to ensure that their compliance programs are functioning effectively and less on how the compliance program is structured.
 - a) View poorly a well written compliance plan that sits on the shelf
 - b) View favorably a well funded, resourced compliance program
 - c) View favorably an independent compliance officer, with direct access to C-suite and Board

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March 2017: HHS-OIG Shift in Focus Continues:

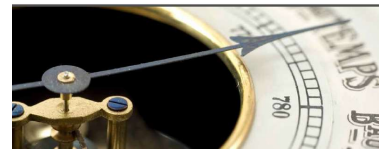
- This shift in focus is also the reasoning behind the release of the publication *Measuring Compliance Program Effectiveness: A Resource Guide*.*
- Publication was a collaboration between industry association and government agency.

Measuring Compliance Program Effectiveness: A Resource Guide

ISSUE DATE: MARCH 22, 2017

HCCA-OIG Compliance Effectiveness Roundtable
Roundtable Meeting: January 17, 2017 | Washington, DC

*HCCA-OIG Compliance Effectiveness Roundtable March 27, 2017.



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March 2017: OIG/HCCA Compliance Program Effectiveness Guide

- 50+ pages with over 400 ideas on measuring the effectiveness of the Seven Elements of an effective compliance program
- Some key areas:
 - Standards/Policies & Procedures
 - Compliance Program Administration (**including Boards**)
 - Screening & Evaluation of Staff, Vendors and other agents
 - Communication, Education and Training
 - Monitoring, Auditing and Internal Reporting
 - Principal for Non-Compliance
 - Investigation and Remedial Measures

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March 2017: OIG/HCCA Compliance Program Effectiveness Guide

- The stated purpose of the Guide is:
 - “To give health care organizations as many ideas as possible, be broad enough to help any type of organization, and let the organization choose which ones best suit its needs.”



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March 2017: OIG/HCCA Compliance Program Effectiveness Guide

- Guide’s comments on Board’s Role:

Element 2: Compliance Program Administration		
	What to Measure	How to Measure
	Board of Directors:	
2.1	Active Board of Directors	<ul style="list-style-type: none"> Review minutes of meetings where Compliance Officer reports in-person to the Audit and Compliance Committee of the Board of Directors on a quarterly basis Conduct inventory of reports given to board and applicable committees.
2.2	Board understanding and oversight of their responsibilities	<ul style="list-style-type: none"> Review of training and responsibilities as reflected in meeting minutes and other documents (training materials, newsletters, etc.). Do minutes reflect board’s understanding? Review/audit board education – how often is it conducted? Conduct interviews to assess board understanding.
2.3	Appropriate escalation to oversight body	<ul style="list-style-type: none"> Review minutes/checklist in compliance officer files
2.4	Commitment from top	<ul style="list-style-type: none"> Review compliance program resources (budget, staff). Review documentation to ensure staff, board and management are actively involved in the program. Conduct interviews of board, management and staff.
2.5	Process for escalation and accountability	Process review (document review, interviews, etc.). Is there timely reporting and resolution of matters?

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March 2017: OIG/HCCA Compliance Program Effectiveness Guide

- Note also, that while there were over 400 ideas, HHS Inspector General David Levinson noted when announcing the Guide, that no organization is expected to adopt all or even a large number of the suggestions, nor is the Guide the same as a “Checklist” or certification program.
- Rather, each organization should select measures based on the specific needs, resources and risks of the organization.

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Meanwhile, Over at the Department of Justice:

February 2017:

About the same time as the HCCA-OIG’s “Measuring Compliance Program Effectiveness”, the Department of Justice published its guidance in “Evaluation of Corporate Compliance Programs.”

- Drafted by DOJ Criminal Division, Fraud Section.

*U.S. Department of Justice, “Evaluation of Corporate Compliance Programs” (available at www.justice.gov/criminal-fraud/page/file/937501/download).

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The Department of Justice:

- This 2017 publication provided an extensive list of more than 100 questions that federal investigators use to inquire across a range of compliance program operating functions and that were found to be useful in evaluating provider fraud, waste, or abuse.

U.S. Department of Justice



U.S. Department of Justice
Criminal Division

Evaluation of Corporate Compliance Programs

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April 2019: DOJ Updates its 2017 Guidance

April 2019 Update:

- Criminal Division updates the February 2017 edition “Evaluation of Corporate Compliance Programs.”
- Status:
 - Advises federal prosecutors that corporate compliance **must** be evaluated in specific context of the criminal prosecution; not a rigid formula to assess the effectiveness of the compliance program.



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April 2019: DOJ Update

- DOJ recognizes there are **common questions** a federal prosecutor should ask in course of making an individual determination, the “Principals of Federal Prosecution of Business Organizations” in the Justice Manual notes **three “Fundamental Questions”** a prosecutor should ask:



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April 2019: DOJ Update

1. Is the Corporation’s Compliance Program Well Designed?

- Risk Assessment
- Policies/Procedures
- Training/Communication
- Confidential Reporting & Investigatory Process
- Third Party Management
- Mergers/Acquisitions



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April 2019: DOJ Update

2. Is the Corporation's Compliance Program Being Implemented Effectively?

- Commitment by Senior Management (including the Board)
- Autonomy & Resources
- Incentives & Disciplinary Measures



June 2020: DOJ Update

- DOJ recently updated its “Evaluation of Corporate Compliance Programs.” Question 2, Was revised to state:
Is the Corporation's Compliance Program adequately Resourced and Empowered to Function Effectively?
- The board of directors and executives should set the tone for the rest of the company (page 10)
- The “governing authority” shall be knowledgeable about the content and operation of the compliance/ethics program and exercise reasonable oversight
- Ask: - What compliance expertise has been available to the board?
 - Have the board and external auditors held executive sessions with compliance and control functions?
 - What information has the board executed in oversight role?

April 2019: DOJ Update

3. Does the Corporation's Compliance Program Work In Practice?

- Continuous Improvement, Periodic Testing and Review
- Is there actual investigation of Misconduct
- Analysis and Remediation of Any Underlying Misconduct



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April 2019 and June 2020 DOJ Updates

The Takeaway:

The answers to these three questions are designed to assist federal prosecutors determine to what extent a corporation's compliance program was effective at the time of the offense and at resolution, for determining:

- a) Form of resolution or prosecution
- b) Monetary penalty, if any; and
- c) Compliance obligations for any corporate criminal resolution (e.g.: monitoring or reporting obligations)

Takeaway

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May 2019 - Texas: Seminole Hospital District of Gaines County

EXECUTION COPY

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively, the United States), the State of Texas, acting through the Office of Inspector General (HHSC-OIG) of the Health and Human Services Commission of the State of Texas (HHSC), an agency of the State of Texas (collectively, Texas), and Seminole Hospital District of Gaines County, Texas (the District) through their authorized representatives.

RECITALS

A. The Seminole Hospital District of Gaines County, Texas was created by the Texas legislature in 1971. As a political subdivision of the State of Texas, the District is charged by statute with providing medical care to the inhabitants of Gaines County, Texas.

B. On September 21, 2018, the District, through Counsel, delivered a letter to the United States Attorney's Office for the Northern District of Texas, the Texas Health and Human Services Commission, and the Office of Inspector General for the Texas Health and Human Services Commission (the Disclosure). **In the Disclosure, the District states that from 2012 through 2017 it improperly paid physicians Dr. Wendell Parkey, Dr. Lance Martin, Dr. Jean-Pierre Letellier, Dr. Timothy Glycyd, and Dr. Gilbert Sayegh (collectively, the District Physicians) more than fair market value for their services.**

- Paid 5 physicians more than FMV
- 2012-2018
- Settled valid \$25 million claim for \$7 million repayment
- Did not release claims against other parties (i.e. doctors?)

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May 2019 - Texas: Seminole Hospital District of Gaines County

- District Agrees in settlement to cooperate with ongoing investigation:
 - 1) “The District agrees to cooperate fully and truthfully with the investigation of individuals and entities not released in this Agreement by either the United States or Texas. Upon reasonable notice, the **District shall encourage**, and agree not to impair, the cooperation of the directors, officers, and employees of the District in **the investigation of individuals and entities not released in this Agreement by the United States or Texas**, and the District shall further use their best efforts to make available, and encourage, the cooperation of former directors, officers, and employees of the District for interviews and testimony, consistent with the rights and privileges of such individuals. The District further agrees to furnish to the United States and Texas, upon request, complete and unredacted copies of all non-privileged documents. . .”

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Texas: Seminole Hospital District of Gaines County - May 2019 (cont.)

- 2) This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent otherwise explicitly provided for herein.

**DO NOT
RELEASE**

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A Final Thought: Do Not Strive To Take Unnecessary Risks Or Be A Market Leader In Creative Compliance

- Due to the technical nature of many of the healthcare laws and regulations (FCA, Stark Law, and Anti-Kickback), it is wise to be conservative in your approach to compliance
 - Even small technical violations can potentially lead to large penalties and fines
 - Consider use of the self-disclosure protocol if violations are detected and to increase your potential to minimize liability exposure especially for minor technical violations



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Questions?



waller

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Austin, Texas
(512) 685-6400

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Waller Lansden Dortch & Davis, LLP

- Recognized among the nation’s ten largest healthcare law firms by American Health Law Association since 2005
- Approximately 200 attorneys serving 10 core industries
- Honored annually by Chambers USA and Best Lawyers
- Ranked among “America’s Best Corporate Law Firms” by Corporate Board Member magazine since 2000



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Nashville, TN 37219
(615) 244-6380

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*Thank
you*

