Maximizing Relations with Your Board to Ensure Sound Governance and Enhance Hospital Performance

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GOALS OF THE PRESENTATION

- Learn about the latest regulatory developments impacting boards and compliance officers
- Obtain helpful tips and tools to educate boards about compliance
- Understand the need for an effective compliance program
- Practical discussion of how to demonstrate compliance program effectiveness
HEALTH CARE IS COMPLICATED

“EVEN SMALL HEALTHCARE INSTITUTIONS ARE COMPLEX, BARELY MANAGABLE PLACES...LARGE HEALTHCARE INSTITUTIONS MAY BE THE MOST COMPLEX ORGANIZATIONS IN HUMAN HISTORY.”
- Peter Drucker

WHY DOES THE GOVERNMENT CARE ABOUT COMPLIANCE?

FISCAL DISASTER

- Health care costs rising at record levels!
- Large state budget deficits!
- Quality of care linked to compliance!
- Baby-boomers retiring!
EXPANSION of REGULATORY ENFORCEMENT

- The expansion of health care regulatory enforcement and compliance activities and the heightened attention given to the responsibilities of the Board of Directors are critically important today for all health care providers.

ROLE OF THE GOVERNING BOARD

Board “shall be knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight with respect to the implementation and effectiveness of the compliance and ethics program.”
WHAT IS AN EFFECTIVE PROGRAM?

- “Just Culture”
- Personal ethical responsibility for proper behavior
- People know the important rules and know where to get help, and are comfortable about asking for help
- Positive Outcomes

OIG and NYS OMIG
GENERAL STANDARDS

- Organization exercises due diligence
- Organization promotes a culture encouraging ethical and lawful conduct
- Compliance program is reasonably designed, implemented, and enforced
- Failure to prevent or detect a specific offense does not necessarily mean that the program is not generally effective
TRUSTEES FIDUCIARY RESPONSIBILITIES

- Duty to act in the best interests of the company and no other interest
- Duty to stay informed and act responsibly on information they receive
- Measured against the “Business Judgment Rule”
- Duty to protect the interest of bondholders and the public

BUSINESS JUDGMENT RULE

DILBERT | Scott Adams

THEN OUR NEW CEO BACKED UP A MOVING VAN TO THE BUILDING AND ROBBED US.

AT FIRST WE THOUGHT HE WAS BREAKING THE LAW, BUT HE HAD A WRITTEN OPINION FROM HIS TAX LAWYER SAYING IT WAS PROBABLY OKAY.

WHAT DID THE BOARD OF DIRECTORS DO?

AFTER LOADING THE VAN?
SCOPE OF COMPLIANCE ROLES

**Board of Trustees** – Oversee the management of the Compliance Program

**Management** – Actively support the Compliance Program and to ensure implementation of the Compliance Program activities

**Corporate Compliance** – Operational responsibility of the Compliance Program which primarily includes education, conducting audits, implementing other proactive monitoring tools, and responding to compliance inquiries (i.e., Medicare and Medicaid)

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**July ‘04 - An Integrated Approach to Corporate Compliance (OIG/AHLA)**

- Senator Grassley’s quote: “Apparently, neither Tenet nor its General Counsel saw any conflict in his wearing two hats as Tenet’s General Counsel and Chief Compliance Officer…"

- *It doesn’t take a pig farmer from Iowa to smell the stench of conflict in that arrangement.*
WHICH QUESTIONS SHOULD THE BOARD ASK...

- How is the Board structured to oversee compliance?
- How is the compliance program structured and who are the key employees responsible?
- What is the compliance reporting structure?
- How does the compliance program address significant risks of the organization?
- How are the risks determined?
- What are the resources needed?

HHS IG: DANIEL LEVINSON, “TRUSTEE ENGAGEMENT AND HOSPITAL SUCCESS”

- Compliance officer should not serve as hospital’s legal counsel
- Board needs a system for candid reporting: adverse events, patient complaints, medical and medication errors, patient quality, etc.
- The best boards are active, questioning and even skeptical concerning the hospitals they oversee
Q: What is the board’s role in the oversight of compliance programs?

A: “The most significant role is becoming sufficiently educated about the topic to ask appropriate questions and determine whether management has the expertise, the will and the metrics to provide reasonable assurance of compliance, and for board members to review intelligently the responses and submissions of management.”

NY OMIG BOARD COMPLIANCE RESPONSIBILITIES continued…

“Non profit board members can face personal financial and professional exposure and embarrassment from membership on a board which fails in its oversight responsibilities.”
NY OMIG BOARD COMPLIANCE RESPONSIBILITIES continued…

Q: How many times a year to you recommend reporting to the full board?

A: “In the absence of a specific, major compliance issue, I would recommend a quarterly report, in writing with an opportunity for questions, to the full board by the subcommittee, and at least an annual in-person presentation by the compliance officer to the full board.”

OTHER GOVERNANCE GUIDANCE

- IRS Checksheet and Guide
- Revised Federal Sentencing Guidelines
- Bond Rating Firms (e.g., Moody’s)
- PPACA § 6201 and § 6401(a) (7) (in the future)
SCCE/HCCA April 2010 Report – The Relationship Between the BOD and the Compliance Officer

- Proper board and compliance officer relationship is critical
- Executive session meetings relatively uncommon
- Compliance reports substantively edited by General Counsel or others

What to Report to the Board

- Educate on industry developments
- Prioritize
- Risk assessments and work plans
- Audit status reports
- Annual, semi-annual or quarterly reports
- Proactive vs. reactive information
IRS Form 990 - Trustee
Conflicts of Interest

- Revised IRS Form 990
  - Increases transparency and disclosure of non-profit hospitals’ operations
  - Highlights conflicts of interest and insider dealings
  - Among other topics, requires reporting board members’ and key employees’ family and business relationships
  - See sample conflicts of interest questions

IRS FORM 990 –
GOVERNANCE ISSUES

<table>
<thead>
<tr>
<th>Section B. Policies</th>
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<tbody>
<tr>
<td>12a</td>
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<tr>
<td>12b</td>
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<tr>
<td>12c</td>
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<td>13</td>
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<td>14</td>
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<tr>
<td>15</td>
</tr>
<tr>
<td>15a</td>
</tr>
<tr>
<td>15b</td>
</tr>
</tbody>
</table>

Yes | No |
---|---|
12a | Yes |
12b | Yes |
12c | Yes |
13  | Yes |
14  | Yes |
15a | Yes |
15b | Yes |
Trustee Compliance Board Training

- How often?
- How long?
- What topics?
  - Pertinent changes in the law
  - Trustee government guidance
  - Fiduciary duties
  - Newsworthy events
  - Quality/Compliance
  - Internal developments
- Enforcement?

THE COST CONUNDRUM
COST CONUNDRUM

“And the damning question we have to ask is whether the doctor is set up to meet the needs of the patient, first and foremost, or to maximize revenue.” - Dr. Atul Gawande

OR

STRATEGIC RISK MANAGEMENT

- Anticipate the Risk
- Assess the Risk
- Act Against the Risk
- Adopt a Plan

*Be Prepared*...

Risk assessments rarely conclude that everything is under control
DATA MINING

- Federal/state governments investing heavily in data mining tools

- What is “data mining” and how does it relate to risk assessments?

- Types of data mining algorithms/reviews
  - RAC
  - OIG/OMIG work plans
  - External reports (e.g., Medicare Compliance Report)
  - Help Line calls
  - Internal inquires

DATA MINING continued…

- Identified data mining risk areas often do not equate to errors

- Data mining software can validate data is within a normal range

- Lots of options to perform data mining internally or externally
SELF-ASSESSMENT TOOLS

- Handouts:
  - OMIG Compliance Program Self-Assessment Tool
  - Hospital Compliance Program Self-Assessment Tool (based on OMIG guidance)
  - Sample Annual and Semi-Annual Risk Assessment Guide
  - Helpful to identify strengths and weaknesses
  - Not an all inclusive list or regulatory guidance

COMPLIANCE ASSESSMENT PROCESS FLOW

- Board of Trustees: Audit and Compliance Committee
- Risk Identification
- Risk Assessment
- Controls Assessment
- Establish Priorities
- Develop Work Plans
- Monitor
- Control Activities
- Evaluate
- Communicate

Focus on Compliance Risks
RISK ASSESSMENT RESOURCE GUIDE

- Compiled semi-annually and the areas covered include the following:
  - The status of ongoing Compliance initiatives
  - Key changes and updates to pertinent rules and regulations
  - Risk profile chart
  - Health System financial data and benchmarks

RISK ASSESSMENT RESOURCE GUIDE

continued…

- Government audit data trends and Health System government audits
- Internal audits conducted
- Health System voluntary disclosures
- Health System developments
- Compliance Help-Line trend analysis
DETERMINING POTENTIAL RISK AREAS

- Interviews of key personnel
- External work plans from OIG and OMIG are reviewed
- Prevalent industry topics also reviewed
- Internal data mining, through third party software
- Financial data is assessed to evaluate reimbursement trends
- Audit items that pertain to the Health System are placed on a “potential audit” list
- Prior year audits/re-audits

Risk Matrix and Work Plan Development

<table>
<thead>
<tr>
<th>Vulnerability</th>
<th>Interim NSLIJ Compliance Risk Profile</th>
</tr>
</thead>
<tbody>
<tr>
<td>Almost Certain</td>
<td></td>
</tr>
<tr>
<td>Likely</td>
<td></td>
</tr>
<tr>
<td>Moderate</td>
<td></td>
</tr>
<tr>
<td>Unlikely</td>
<td></td>
</tr>
<tr>
<td>Rare</td>
<td></td>
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</tbody>
</table>

The purpose of this graph is to provide a visual depiction of high risk issues which may impact the Health System based upon our analysis. The graph does not include all proposed audits, initiatives or risks, but provides a high-level overview of the compliance risks that may impact NSLIJ.

KEY:
- Red=High Risk
- Yellow=Mod. Risk
- Green=Low Risk
OIG 2005 SUPPLEMENTAL COMPLIANCE PROGRAM GUIDANCE FOR HOSPITALS

“Building and sustaining a successful compliance program rarely follows the same formula from organization to organization. However, such programs generally include:

• Commitment of the hospital’s governance and management at the highest levels;
• Structures and processes that create effective internal controls; and
• Regular self-assessment and enhancement of the existing Compliance program.”

GAO Report: Early Evidence of Compliance Program Effectiveness is Inconclusive

• Refunds of provided-identified overpayments
• Self-disclosures of potential misconduct
• Frequency of disciplinary actions for non-compliant employees
• Increased corporate awareness of compliance program
HCCA AND OIG JOINT REPORT: BUILDING A PARTNERSHIP FOR EFFECTIVE COMPLIANCE

- Baseline (e.g., initial) audits

- Proactive audits (based upon industry or internal risk factors)

- Issue-based (when the provider knows there is a problem and is trying to ascertain the depth of the problem)

HCCA and OIG Joint Report: Building a Partnership for Effective Compliance continued…

- Audit results

- Logs of hotline calls and their resolution

- Corrective action plans

- Due diligence regarding business transactions

- Records of disciplinary action
HCCA and OIG Joint Report: Building a Partnership for Effective Compliance continued…

- Documentation of modification and distribution of policies
- Records of disclosures and refunds to federal health care programs
- Records of training programs

OIG RESOURCES – ASKING THE RIGHT QUESTIONS

- Physician Education
- Compliance Training
- Corporate Integrity Agreements
- OIG Compliance Guidance
- Board of Directors Guidance
HOW TO BUILD AND MEASURE A COMPLIANCE PROGRAM FOR EFFECTIVENESS

Measures of effectiveness:
- Certification History.
- Self-Disclosure/Hot Line reviews.
- Frequency of same edits occurring.
- Frequency of audit issues recurring.
- Excluded parties & Quality of Care.
- Deceased beneficiary billing.

Compliance connections to board & management.
- Systems identifying risk areas, errors, PoC and monitoring.
- Implementation of corrections & improvement.

Compliance plan document.
- Compliance Officer/Compliance Committees.
- Training and education programs.
- Communication lines to CO.
- Disciplinary policies and procedures.
- Non-retaliation/non-intimidation.

Measures of effectiveness:
- Certification History.
- Self-Disclosure/Hot Line reviews.
- Frequency of same edits occurring.
- Frequency of audit issues recurring.
- Excluded parties & Quality of Care.
- Deceased beneficiary billing.

From OMIG Presentation:

OMIG - COMPLIANCE PROGRAM EFFECTIVENESS

- Compliance Program Assessment Tool
  http://www.omig.ny.gov/data/content/view/81/206/

- Compliance Alert #7 - Effectiveness Review Process
  http://www.omig.ny.gov/data/content/view/215/299/

- OMIG Effectiveness PowerPoint Presentation
CMS MEDICARE PART C AND PART D
MANDATORY COMPLIANCE PLANS
AND AUDITS

- CMS has learned from the past – more stringent regulations
- Preparation checklists
- Interviews
- Document requests
- Some similarities to OIG CIA on-site reviews

### Methods to Assess a Compliance Program

<table>
<thead>
<tr>
<th>Method</th>
<th>Pros</th>
<th>Cons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self-Assessment</td>
<td>• Cost effective&lt;br&gt;• Knowledgeable&lt;br&gt;• Easier to organize</td>
<td>• Lack of independence&lt;br&gt;• Potential bias&lt;br&gt;• Trend towards external</td>
</tr>
<tr>
<td>Peer Review</td>
<td>• Cost effective&lt;br&gt;• Practical guidance&lt;br&gt;• Learning opportunity</td>
<td>• Difficult to find partner&lt;br&gt;• Confidentiality&lt;br&gt;• Potential bias if co-peer</td>
</tr>
<tr>
<td>Outside Consultant</td>
<td>• Breadth of client base&lt;br&gt;• Independence&lt;br&gt;• Credible if reputable firm used</td>
<td>• Cost&lt;br&gt;• Increase in process time&lt;br&gt;• “Specific organization” operational expertise</td>
</tr>
<tr>
<td>Government Review</td>
<td>• Free if voluntary&lt;br&gt;• Government insight&lt;br&gt;• Good enough for government, good enough for us!</td>
<td>• Costly if an investigation&lt;br&gt;• Not all government agencies view issues the same&lt;br&gt;• Risk if program fails&lt;br&gt;• Disclaimer on “effective”</td>
</tr>
</tbody>
</table>
### Some Ways to Measure Effectiveness

<table>
<thead>
<tr>
<th>Item</th>
<th>2011 Results</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Active Compliance Help-Line</strong></td>
<td>• Over [X] calls</td>
</tr>
<tr>
<td></td>
<td>• Within industry average</td>
</tr>
<tr>
<td></td>
<td>• All issues resolved</td>
</tr>
<tr>
<td><strong>Effective compliance training program</strong></td>
<td>• &quot;~ [XX] % completed the training</td>
</tr>
<tr>
<td></td>
<td>• Won national award</td>
</tr>
<tr>
<td></td>
<td>• &quot;~ [XX] % of employees found it effective</td>
</tr>
<tr>
<td></td>
<td>• [XX] % of employees received a passing test score</td>
</tr>
<tr>
<td><strong>Strong voluntary disclosure program</strong>*</td>
<td>• [X] disclosures - &quot;~ $X million&quot;</td>
</tr>
<tr>
<td><strong>Robust audit function</strong></td>
<td>• Conducted [X] coding audits</td>
</tr>
<tr>
<td><strong>Implemented new data mining tools</strong></td>
<td>• Confirmed [X]'s focus is correct</td>
</tr>
<tr>
<td></td>
<td>• Decreased error rate by [X]</td>
</tr>
<tr>
<td></td>
<td>• All CAPs completed</td>
</tr>
<tr>
<td><strong>Written policies, procedures, standards of conduct</strong></td>
<td>• [XX]% completed annual Code of Conduct certification</td>
</tr>
<tr>
<td></td>
<td>• [X] revised or new compliance policies</td>
</tr>
</tbody>
</table>

### Some Ways to Measure Effectiveness (cont.)

<table>
<thead>
<tr>
<th>Item</th>
<th>2011 Results</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Employees Awareness of Compliance Program</strong></td>
<td>• [X] % employees knows the Compliance Officer by name</td>
</tr>
<tr>
<td></td>
<td>• [X] % of employees know how to contact the compliance office</td>
</tr>
<tr>
<td></td>
<td>• [X] % do not fear retaliation</td>
</tr>
<tr>
<td><strong>Risk Assessment and Work Plan Process</strong></td>
<td>• Formal semi-annual review</td>
</tr>
<tr>
<td></td>
<td>• Interviewed and surveyed [X] employees and managers</td>
</tr>
<tr>
<td><strong>Exclusion Screening Process</strong></td>
<td>• Monthly review</td>
</tr>
<tr>
<td></td>
<td>• [X] findings</td>
</tr>
<tr>
<td></td>
<td>• Audit of this process was favorable</td>
</tr>
<tr>
<td><strong>Favorable benchmarking against similar area providers</strong></td>
<td>• Outside firms’ praise</td>
</tr>
<tr>
<td><strong>Outside validation by government agencies</strong></td>
<td>• Government conducted [X] audits</td>
</tr>
<tr>
<td></td>
<td>• [X] % Financial error rate compared to revenue audited</td>
</tr>
</tbody>
</table>
COMPLIANCE PRE-AUDIT TIPS

- Organizational Overview
- Compliance Logs
- Compliance Training Records
- Exclusion Screening
- Audit Process and Results
- Compliance Committees
- Governance
- Conflicts of Interest
- Physician Compensation
- Soft Factors
- Compliance Policies and Code of Ethical Conduct

Questions

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