

# PRINCIPLES OF GOOD GOVERNANCE FOR HOSPITAL BOARDS

ISB Health Law Section

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# THE BOARD'S ROLE IN COMPLIANCE – A RENEWED EMPHASIS

# BOARD ROLE IN COMPLIANCE OVERSIGHT

- Renewed OIG Emphasis for Board Involvement
- Practical Guidance for Health Care Governing Boards on Compliance Oversight
- Published April 20, 2015
- Collaboration between OIG (HHS Inspector General), AHIA (internal auditors), AHLA (attorneys) and HCCA (compliance).

# OLG Expectations

# BOARD ROLE IN COMPLIANCE OVERSIGHT – OIG EXPECTATIONS

- Board must act in good faith to ensure:
  - Information and reporting system exists;
  - Reporting system is adequate to ensure Board receives appropriate information.
- Widely-available resources as benchmarks including OIG's Compliance Guidance and sample compliance plan.

# BOARD ROLE IN COMPLIANCE OVERSIGHT – OIG EXPECTATIONS

- OIG recognizes that it not “one size fits all”
- But, a meaningful effort by Boards to review the adequacy of existing compliance systems and functions is very important
- Compliance program will depend on size and complexity of organization
- Smaller and less complex organizations must be equally committed to compliance

# BOARD ROLE IN COMPLIANCE OVERSIGHT – OIG EXPECTATIONS

- But, smaller organizations may meet the expectations with “less formality and fewer resources”
- May use “available personnel” instead of “separate staff” to handle compliance program.
- In smaller organizations, Boards must be “more involved” in compliance

# BOARD ROLE IN COMPLIANCE OVERSIGHT – OIG EXPECTATIONS

- Board members may wish to utilize outside educational programs
- May require management to create a formal education calendar.
- Board should consult with “experienced regulatory, compliance and legal professionals”
- Sends strong message to organization





# **Roles and Relationships**

# BOARD ROLE IN COMPLIANCE – ROLES AND RELATIONSHIPS

## Compliance Functions

- Internal Audit
- Compliance
- Legal
- HR
- Quality Improvement
- Roles of each function should be defined

# BOARD ROLE IN COMPLIANCE – ROLES AND RELATIONSHIPS

## Compliance Function

- Promotes prevention, detection and resolution of actions that do not conform to legal, policy or business standards
- Policies and procedures for employee guidance
- Incentives to promote compliance
- Plans to improve or sustain compliance

# BOARD ROLE IN COMPLIANCE – ROLES AND RELATIONSHIPS

## Compliance Function (con't.)

- Metrics to measure execution (by management).
- Metrics to measure implementation of corrective actions
- Reports and dashboards for management and Board to measure effectiveness

# BOARD ROLE IN COMPLIANCE – ROLES AND RELATIONSHIPS

## Legal Function

- Advises of regulatory risks of business strategies
- Advice and counsel on laws and regulations
- Defend or initiate legal proceedings if warranted

# BOARD ROLE IN COMPLIANCE – ROLES AND RELATIONSHIPS

## Internal Audit Function

- Objection evaluation of existing risk and internal control systems
- Audits ensure monitoring functions are working as intended and identify where management monitoring and additional oversight may be needed
- Reduce risk to organization and promote effective and efficient use of resources

# BOARD ROLE IN COMPLIANCE – ROLES AND RELATIONSHIPS

- On a periodic basis, Boards should evaluate adequacy, independence and performance of these functions
- Compliance Officer should not be counsel for hospital nor be subordinate in function or position to counsel or the legal department in any manner
- Must be independent, but can collaborate and work together

# BOARD ROLE IN COMPLIANCE – ROLES AND RELATIONSHIPS

- Same for internal audit dept.
- All three functions should have access to hospital information and resources
- Policies should ensure access to information



# Reporting to the Board

# BOARD ROLE IN COMPLIANCE – REPORTING TO THE BOARD

- Board should set and enforce expectations
- Receive regular reports separately and independently from variety of key players including compliance, audit and legal
- Board should engage leadership team, including those deeper in the organization
- Establish clear expectations and hold management accountable

## BOARD ROLE IN COMPLIANCE – REPORTING TO THE BOARD

- May use objective scorecards to measure how well management is:
  - Executive compliance program
  - Mitigating risks;
  - Implementing corrective actions

# BOARD ROLE IN COMPLIANCE – REPORTING TO THE BOARD

Reports should include things like:

- Information regarding internal or external investigations
- Serious issues raised in internal and external audits
- Hotline call activity
- Allegations of material fraud or misconduct

# BOARD ROLE IN COMPLIANCE – REPORTING TO THE BOARD

- Format of reports should be sufficient to satisfy interests or concerns of Board members
- Dashboards are widely used and should contain compliance indicators to access risk
- Board should ensure that mechanisms are in place to secure timely reporting of suspected compliance violations



# Identifying and Auditing Risk Areas

# BOARD ROLE IN COMPLIANCE – IDENTIFYING AND AUDITING RISK AREAS

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

- Identifying compliance risk
- Investigating potential compliance risks
- Identifying and implementing appropriate corrective actions
- Communicating between various functions

# BOARD ROLE IN COMPLIANCE – IDENTIFYING AND AUDITING RISK AREAS

Some risks common to all providers including:

- Referral relationships and arrangements (STARK and Anti-Kickback Statute)
- Billing problems
  - upcoding
  - services not rendered
  - medically unnecessary services
  - lack of required documentation.



# BOARD ROLE IN COMPLIANCE – IDENTIFYING AND AUDITING RISK AREAS

- Board ensures that Board and management have strong processes for identifying risk areas
- Internal sources e.g. employee reports or internal audits
- External sources e.g. professional publications, OIG guidance, consultants, competitors, failures in other organizations

# BOARD ROLE IN COMPLIANCE – IDENTIFYING AND AUDITING RISK AREAS

- Board should ensure that management consistently reviews and audits risk areas
- Board should ensure management develops, implements, and monitors corrective action plans.

# BOARD ROLE IN COMPLIANCE – IDENTIFYING AND AUDITING RISK AREAS

## Recent Trends – New Risks

- Increasing consolidation
- Emphasis on quality
- Changes in reimbursement/insurance coverage
- New incentives
- New efforts at transparency



# **Accountability and Compliance**

# BOARD ROLE IN COMPLIANCE – ENCOURAGING ACCOUNTABILITY AND COMPLIANCE

- Compliance is an enterprise-wide responsibility
- Audit, Compliance, and Legal functions advise, evaluate, identify and monitor, but entire organization is responsible for compliance program
- Seeking a “culture of compliance”
- Or, “compliance as a way of life”

## BOARD ROLE IN COMPLIANCE – ENCOURAGING ACCOUNTABILITY AND COMPLIANCE

- Board can tie bonuses or management compensation to consistency of organization's compliance efforts
- Claw back (payback) provisions if metrics are not met.

# BOARD ROLE IN COMPLIANCE – ENCOURAGING ACCOUNTABILITY AND COMPLIANCE

Many incentives for Board's to ensure compliance

- Self-identification and voluntary repayment is much less painful than the False Claims Act
- 60-day repayment of overpayments rule
- Greater leniency in settling repayment or other cases
- Self-disclosure = faster resolution and lower payment

**QUESTIONS?**

**THANK YOU**

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