

# Outsourcing Compliance in Light of Health Care Reform

## Hospitals Cannot Treat Compliance as a Secondary Issue

Many issues are being raised during the course of the current health care reform debate in Washington, D.C. One issue that has received little attention relates to the potential statutory mandate that all health care providers/suppliers participating in Medicare and Medicaid must have a compliance program as a condition of participation. In light of this possible requirement and other program integrity provisions that may emerge from health care reform, hospital should take stock as to how to best meet their future compliance integrity obligations.

Our firm has conducted many compliance program effectiveness reviews and found that many small hospitals have treated compliance as a secondary, back-burner issue. This may be the time to reexamine this position. Senior officers and executives may have more responsibility for a compliance program and not simply delegate it to someone more junior in the organization.

To the extent that a provider or supplier does not have the necessary internal resources, getting outsourced assistance may be an appropriate consideration. Outsourcing compliance program duties and activities to independent experts should permit a hospital a means to evidence an effective compliance program.

For hospitals hampered by limited resources, outsourcing the compliance function to qualified experts may be an option worth considering. It has long been recognized that health care organizations with limited staff resources can outsource all or part of the functions of a compliance officer to a third party. For example, over a decade ago, the Office of Inspector General (OIG) of the Department of Health and Human Services and the Health Care Compliance Associa-



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tion (HCCA) cosponsored a government-industry roundtable devoted to discussing compliance-related topics. One of the topics discussed was outsourcing compliance programs.

Participants from both large and small health care providers agreed that, with the exception of the adoption of a code of conduct, most compliance functions could be outsourced to independent compliance experts. The benefits of outsourcing compliance activities include gaining access to compliance “best practices” by virtue of an independent expert’s broader exposure to the compliance discipline, ongoing verification of internal compliance processes, and the supplementation of limited internal resources.

The OIG has indicated that it understands that health care organizations may reasonably decide to outsource compliance duties and activities. Its general Compliance Program Guidance states: “For those companies that have limited resources, the compliance function could be outsourced to an expert in compliance.” Further, the OIG in its guidance on a “Compliance Program for Individual Physician and Small Group Practices” suggests that one solution for ensuring compliance in a small entity would be to designate a staff person to serve as a liaison with an outsourced compliance officer.

The OIG noted that if the compliance officer responsibility is outsourced, it would be beneficial for the compliance officer to have sufficient interaction with the entity to be able to effectively understand its operations. Therefore, there is a need for an internal liaison to keep the outside consultant informed of activities and to assist in implementing compliance actions.

While many providers and suppliers have opted for partial outsourcing of compliance functions, mostly for hot lines, sanctions screening, and auditing and monitoring related to claims/medical records, only a relatively small number have outsourced their entire compliance program, even when there are inadequate internal resources to implement and operate a fully effective

compliance program. We have found it to be common for smaller organizations to add the duties of “compliance officer” to the already extensive responsibilities of other staff members. This results in a compliance officer lacking the time, knowledge, and skills to operate an effective compliance program.

Where the size of a health care organization does not justify a full-time in-house qualified compliance officer, or where there are difficulties in filling a compliance officer vacancy, outsourcing may be a viable option. In those engagements in which our firm provided these services, the costs to the hospital was equal to or less than what was being expended through a weak in-house operated program. Other benefits derived from outsourcing a compliance program include the general recognition that it takes time to keep current with compliance standards and changes in regulatory and legal requirements.

Outsourced compliance activities may encompass the following:

- serving as the focal point for compliance-related activities;
- developing and integrating the elements of the compliance program;
- providing overall direction for the compliance program;
- overseeing auditing and monitoring activities;
- providing changes and updates on the regulatory environment to executive leadership;
- reporting on program progress to corporate officials, including the board;
- providing compliance program status reports to the executive leadership as needed;
- assisting in evaluating and responding to potential compliance risks;
- developing and updating standards of conduct;
- assisting in resolving hot line or other compliance issues encountered by the company;
- developing a sanctions policy for the organization;

- conducting screening of employees against OIG and General Services Administration (GSA) sanction lists;
- providing guidance for allegations of violations of rules, regulations, and code of conduct;
- working under direction of legal counsel as called for by circumstances;
- delivering general employee compliance training and education programs annually;
- providing specialized training and briefings annually to the executive leadership;
- performing an annual review of the compliance program;
- assisting management with ongoing auditing and monitoring plans of specific risk areas; and
- developing compliance program policies and procedures.

If there is a decision to outsource the compliance activities, it is critical that the party

engaged to perform this service be properly qualified to undertake these duties. It is important to select someone with a wide range of compliance program experience over a number of years that includes program development, implementation, management, and evaluation. From our experience, smaller hospitals do not necessarily need to engage a full-time outsourced compliance officer. A highly experienced consultant should be more efficient in carrying out the duties on a part-time basis.

What the hospital must have, however, is someone to act as a liaison or primary contact with whom to coordinate the compliance activities. Finally, high-level executive staff must interface on a regular basis with the outside compliance expert regarding all operations in the organization to ensure that all the necessary elements of an effective compliance program are effectuated.

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