

## Smaller Organization Compliance Programs

[Richard P. Kusserow](#) | August 2023

### Key Points:

- **Having no Compliance Program increases enforcement encounters, liabilities & penalties**
- **Challenge is how to afford an effective Compliance Program**
- **Interim or Designated Compliance Officer may be the solution**

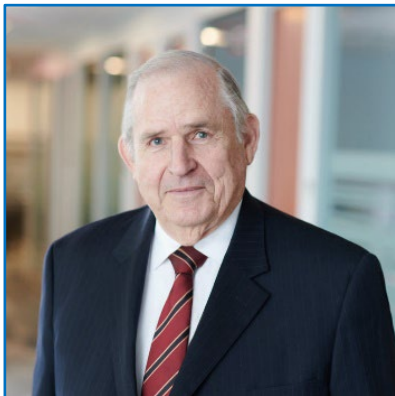
Most larger healthcare organizations have established Compliance Programs with employee Compliance Officers and staff. They can afford in-house staff managing compliance operations, a luxury many small organizations cannot afford. Yet, most DOJ and OIG settlement agreements are with smaller organizations that are unable to evidence a working compliance program. This is a warning to others that failure to have an effective compliance program increases the likelihood of enforcement agency action and increases penalties for those found violating the law. Notwithstanding all this, smaller organizations such as physician practices, clinics, home health agencies, hospices, etc., are not operating on a scale to afford even one full-time person as their Compliance Officer. Yet, having someone perform the duties as a secondary responsibility is a formula for a bad result. Keeping up to date on ever-changing federal and state laws and regulations is daunting, but failure to do so increases the likelihood of violating them. There is no excuse for ignorance in violating laws and regulations. A competent Compliance Officer can identify and ensure the addressing of high-risk regulatory areas. It is also important to have the means to gain early warning of emerging or potential problems and to encourage employees to report suspected and potential violations internally. The fact is that the vast majority of cases involving smaller healthcare entities are the result of a “whistleblower.” Effective compliance programs are the best defense to avoid having such referrals, especially where they encourage employees to report through internal channels.

The DHHS OIG recognizes this and noted in their [Compliance Program Guidance documents](#) that for those companies that have limited resources, the compliance function could be outsourced

to an expert in compliance who can be a part-time alternative to a W-2 employee Compliance Officer. There are several benefits of [engaging a compliance expert](#) to act as the Compliance Officer:

- No delay, able to start immediately
- No recruitment or training costs as would be for a W-2 employee
- Work can be done part-time, or only as much time is needed to do the work
- Pay is only for the hours worked
- No added overhead costs (e.g., FICA, leave, benefits, etc.)
- No learning curve as they are already up to date on the ever-changing regulatory environment
- Have prior experience in adapting compliance programs to smaller organizations
- Can be terminated at any time by simple notice
- Should have their own multi-million dollars liability insurance coverage.

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### About the Author

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.