

Q & A Series on the Current State of Healthcare Compliance Programs

Richard P. Kusserow | May 2024

Part II: Staffing Considerations

On April 30, 2024, Strategic Management Services and SAI360 hosted the Current State of Healthcare Compliance Programs: 2024 Benchmark Results Webinar. The speaker, Richard Kusserow, former HHS Inspector General and CEO of Strategic Management, reviewed the results of the 15th Annual Healthcare Compliance Benchmark Survey and provided his analysis of the results and the changing landscape of compliance departments.

The Webinar was well attended, and many participants asked thoughtful and insightful questions that would be informative to our blog readership at large. We are kicking off a four-part series answering the questions received related to the results and findings discussed during the Webinar.

Part II of the series will focus on questions related to staffing concerns and considerations compliance departments should account for when trying to fill various compliance functions.

What does the Survey indicate as some of the continuing compliance program issues from the COVID pandemic?

Several of the challenges were cited in the Webinar and Survey report. They included evidence of disruption of the workforce that included many quitting their job and, among those remaining, the great majority of compliance employees working remotely to one degree or another, with many resistant to returning to the worksite. Also, during the pandemic, compliance officers retired at twice the rate of previous years, creating gaps that took a long time to fill. The 2024 Survey indicates that many more compliance officers are planning to retire in the next few years. This has resulted in increased time and effort to replace those leaving, as well as being forced to find ways to continue functioning with remote staff. In many cases, compliance officers have

turned to using consultants under part-time contracts to fill staffing gaps. Another area affected by all of this has been the problem of conducting investigations of hotline complaints and allegations. Even when staff is onsite, the parties that need to be interviewed may not be and could compromise effectiveness.

What are the potential benefits of engaging a compliance expert to act as an Interim or Designated Compliance Officer?

The following are some potential benefits of engaging an expert contractor to act as a Compliance Officer, either as the Interim or Designated 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 in the ever-changing regulatory environment;
- Have prior experience in adapting compliance programs to smaller organizations;
- Possess expertise that may not be available in-house;
- Able to provide an independent assessment of the status of the Compliance Program;
- Can be terminated at any time by simple notice; and
- Have their own multi-million dollar liability insurance coverage.

For more information on this question, see <https://www.compliance.com/services/interim-outsourced-compliance-staffing/>.

Since the Survey found it takes a long time to hire new staff and with so many working remotely, is it reasonable for Compliance Officers to contract with consultants to fill gaps?

Every organization must determine whether this is an option that makes sense for them. However, it is increasingly common for organizations to engage compliance consultants to serve as Interim Compliance Officers until a permanent replacement is hired or for the Compliance Officers to seek assistance with addressing short-term staffing gaps. Most of these engagements are on a part-time basis. The advantages are gaining immediately qualified assistance without

the cost of overhead for a W-2 employee (e.g., recruiting, training, FICA, benefit, leave, etc.), paying only for hours worked, and being able to terminate without cause when the services are no longer needed.

Why is it not a good idea to have someone internally assume temporary responsibility for the management of the compliance program?

In the ever-changing regulatory and compliance environment, no provider can afford to have long-term gaps in coverage for compliance leadership. The Survey found that replacing a Compliance Officer can take six months or longer. This is too long to have the program lack firm leadership. Rapid degeneration of the program may occur in the absence of a competent person responsible for day-to-day compliance program management. Filling a gap by designating someone internally is not always a good option, as that individual may likely lack experience and expertise and cannot be expected to recognize and address problems timely and professionally. Also, using a member of the Compliance Office staff is unfair and risky. The fact that an organization has decided that no one internally is qualified and then has someone assume that role for many months creates a lot of problems, including the fact that individuals could well resent having the burden of doing a job that the organization has said they are not qualified to do.

What are some ideas for addressing staff shortages?

- The following are some suggestions to consider in addressing staff shortages:
- Analyze current, most important, and urgent tasks/projects against available resources;
- Rethink priorities and timeframes for scheduled projects and tasks;
- Determine if staff experience and capabilities exist that can be used in other capacities;
- Develop a plan of action to prepare and organize your team for the workload ahead;
- Assist staff in developing skills for different roles/duties (training, webinars, conferences);
- Consider engaging a consultant to address tasks/projects current staff cannot manage;
- Decide if any function can be outsourced (e.g., hotline, sanction screening, training programs, assessments, internal auditing, etc.);
- Consider engaging interns to help with task work.
- Discuss with staff about meeting challenges; and

- Focus on strategies to boost morale and prevent departure.

Can engaging temporary Compliance Officers while seeking a full-time replacement be Cost-Effective?

A compliance expert engaged to be an [Interim Compliance Officer \(ICO\)](#) can offer advantages and be cost-effective, depending on the terms of the agreement. Begin with an analysis of the cost of supporting the full-time Compliance Officer position, including salary as well as overhead costs (FICA, leave, health, insurance, retirement, and other benefits). Keep in mind that a contractor is not an employee, and as such, these overhead expenditures would be included only in their fee schedule. Also, an expert might be able to hold the program together on a less than full-time basis. In making an assessment for this option, consider the benefits of an ICO, such as (a) being easily engaged and terminated; (b) as experts, they won't need training on the duties; (c) maintaining the continuity of the program while seeking a full-time replacement; (d) being immediately available to address new and emerging compliance issues; (e) using prior experience to tackle any work backlogs left by a departing Compliance Officer; (f) assisting in assessing potential candidate qualifications for the permanent position; and (g) providing "fresh eyes" to objectively evaluate the program's status. The latter point is very important in that the engagement could be structured to include the duties of providing a report on an independent assessment of the program. This would not only provide useful, unbiased information for leadership and the board, but it could also be a road map that the new Compliance Officer can follow for "hitting the ground running."

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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.