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COMPLIANCE HOTLINE™

THE NATION'S ESSENTIAL ALERT FOR HEALTH CARE COMPLIANCE OFFICERS

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What you can do to demonstrate compliance effectiveness

Three perspectives on how to build a system of measurement into a compliance program

One of the major uncertainties facing compliance officers is that it is unclear who is going to measure their effectiveness and by what criteria, says **David Orbuch**, compliance officer at Allina Health Systems in Minneapolis. "Even if we understand some of the criteria that certain stakeholders will judge us by, we are not sure what the metrics will be," he asserts.

In 1993, following state and federal investigations into its transportation billing practices, Allina initiated a compliance program, Orbuch told a Health Care Compliance Association audioconference Aug. 29. Its efforts were centralized in 1999, when every Allina facility became responsible not only for the financial aspect of that business unit but also for compliance accountability.

"The laws are not perfect, and people are not perfect, and with 22,000 employees, you are going to have some imperfections," says Orbuch. "We needed to define effectiveness outside the concept of perfection," he explains.

To help accomplish that, over the past year Allina developed a compliance scorecard with input from operations to use as a tool to determine whether its business units have effective compliance programs. Then the scorecard was distributed to the top executives of the system and the board.

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How to effectively utilize health care consultants

While there are many credible reasons for health care providers to hire a consultant, there are just as many bad ones, warns health care attorney **Gerald Griffith** of Honigman Miller in Detroit.

Beginning with reasons that make sense, Griffith says some providers face alarming trends in finances or other indicators that suggest outside advice is necessary. Likewise, it may be appropriate for providers facing a government or third-party audit to use a consultant to conduct a pre-audit review and gauge the organization's exposure. Other times, providers may face a new

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New wave of drug-related investigations expected

The pharmaceutical industry is bracing for what is widely expected to be an $800 million agreement when TAP Pharmaceuticals settles allegations that it improperly marketed to physicians. The settlement could be a harbinger of things to come in the industry, with health care attorneys and federal prosecutors predicting a surge of investigations that will implicate physicians, hospitals, and other providers.

"Pharmaceuticals are definitely going to be the big story for the next year," predicts **Michael Kendall**, a partner with McDermott, Will & Emery in Boston. "The government is looking to set precedents with large companies in terms of settlements and corporate integrity agreements and then use that as the standard to compel smaller companies to follow."

Kendall says these investigations will affect the entire pharmaceutical industry. "The TAP cases

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Compliance effectiveness

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Orbuch reports that Allina developed a simple tool that used a color system of red, yellow, and green. "We wanted [something] that business leaders throughout the organization could look at and understand specifically what criteria they need to meet to get a 'green light' on compliance."

Developing a framework for that evaluation was no easy task, however. That's because each stakeholder, such as law enforcement, regulating authorities, provider management, rating agencies, and banks, look at a compliance program for a different reason.

"I could not guarantee the board that the criteria we were going to select would be the same criteria or the same ingredients the government would look at," says Orbuch. "The purpose for doing this evaluation was to evaluate the utility of a compliance program as a risk management tool and basically determine whether money was well spent on compliance."

Catholic Health East (CHE), based in Newtown Square, PA, took a slightly different approach, according to **Michael Hemsley**, the system's vice president of corporate compliance and legal services. CHE adopted a corporate compliance program in 1998 that was disseminated to each of its regional health corporations (RHCs). Within that framework, each RHC had the flexibility to develop and implement its own compliance plan. CHE then hired Deloitte & Touche to assess RHC efforts against the Office of Inspector General's (OIG's) model compliance guidance and other relevant measures.

According to Hemsley, the primary purpose of the project was to help CHE demonstrate continued due diligence, including verification that each RHC was performing significant compliance program activities and documentation of RHC program development and operationalization throughout the system. It also was designed to identify best practices, develop compliance benchmarking, and facilitate the measurement of process improvement.

"It is not rocket science by any means," says Hemsley. He points out that one approach to measuring effectiveness focuses on measuring effort and is mainly process-related, while an emerging view looks at outcomes and relationships. But many organizations do not yet capture even basic information, he adds.

Based on this "effort project," Hemsley says CHE learned that inadequate emphasis had been placed on compliance as an operational responsibility of managers beyond senior management and the compliance department.

The second lesson concerned the misapplication of resources, both in terms of hard dollars and manpower devoted to compliance program development. Hemsley maintains that, aside from the policies and procedures derived from the compliance program itself, few resources are invested in the real heart of compliance, which he says is monitoring and auditing. In short, while organizations are able to identify problems and take remedial action, proactive activity was lacking.

"If we were to do it over again in terms of making our programs more effective earlier, it would be focused on those two areas," says Hemsley.

Going forward, he says CHE plans to focus on monitoring and auditing. Beginning with the essential processes the government wants to see, Hemsley says CHE now is positioned to develop a realistic baseline and standards such as an acceptable error rate and percentage of repayments.

Donald Koenig, compliance officer with

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Catholic Healthcare Partners (CHP) in Cincinnati, says the major difference his system has with CHE is that it was a target of the government's Operation Bad Bundle, which meant that its development process was dictated largely by settlement agreements and corporate integrity agreements (CIAs).

In 1998, CHP decided to use three simultaneous parallel tracks that included a systemwide education and orientation program to educate its 40,000-plus employees and ensure effective oversight of its CIAs.

Last year, CHP began internal discussions about how to measure the effectiveness of these efforts.

The plan that was developed included indicators to the Federal Sentencing Guidelines and OIG criteria, criteria related to the system's CIAs, and measures that already were being collected by the system for other purposes.

After developing 20 possible standards, the system settled on 10 that are measured by regional corporate responsibility officers (CROs) and their committees and reported at the system level semiannually.

The following 10 measures then are weighed against the system benchmark that was established after reviewing industry standards, peer performance, guidance from fiscal intermediaries, and peer review organizations:

- Outpatient coding accuracy;
- Lab disease panel billing accuracy;
- Percent of bills denied;
- Percent of credit balances repaid in 30 days;
- Percent of name checks completed;
- Percent of associates trained in corporate responsibility program (CRP);
- Percent of associates identifying CRP resources;
- Percent of department associates;
- Percent of repayments within 30 days of quantification;
- Percent of integrity agreement due dates met.

Koenig reports that a much more detailed breakout is completed for each region for regional committees to review and comment on.

He adds that the system-level board also looks at average scores tracked and trended over time to determine trends and help focus resources and attention. ■

Drug-related investigations

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are important because they are focused on the pharmaceutical manufacturing organization, but they are also focused distinctly and directly on doctors," asserts **Deborah Randall**, a health care attorney with Arent Fox in Washington, DC.

In the TAP Pharmaceuticals investigation, the U.S. Attorney's office in Boston alleged that the company offered physicians improper inducements to prescribe its anti-prostate cancer drug Lupron.

The anticipated settlement is expected to spawn a wave of new investigations across the country as U.S. Attorneys focus on the increasing amounts the government is spending on pharmaceuticals. Randall says that trend may be exacerbated by physicians who often are easily frightened by investigations.

According to Randall, the most important recent development is the extent to which various enforcement agencies are now interacting with one another in a way they never used to.

Just a few years ago, the U.S. Department of Justice and the states were hardly talking to one another, says Randall, who served as an attorney with the Department of Health and Human Services (HHS) and the Federal Trade Commission. The states were dubious about pharmaceuticals, and Congress was largely unconcerned, she adds.

That is no longer the case. Randall says the HHS Office of Inspector General is "fascinated and enthralled" by the pharmaceutical industry, and states also are getting into the act with numerous parallel cases on the Medicaid side. "We have a great deal of interplay between the federal government from the kickback standpoint and the state Medicaid programs from the Medicaid standpoint," she explains.

The fact that Medicare and Medicaid are implicated at all has come as a surprise to some in the pharmaceutical industry, who were not aware of the interaction among those companies, physicians, the infusion industry, and other segments of the health care industry, says Randall. "There is a vast number of entities with which pharmaceutical companies find themselves entangled," she says. ■

Using consultants

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law or regulation that requires outside help.

On the other hand, just because everyone else is hiring a consultant doesn't mean you have to, Griffith argues. And while it may make sense to hire a consultant to confirm a message that management is trying to convey to the board, it is a mistake to hire a consultant simply as a way to avoid tough decisions or as a delaying tactic.

Hiring a consultant just because the price is right is another mistake, he warns. Organizations that do so are likely to find that free advice on the propriety of their compensation program is followed by a ready-made compensation program the consultant wants to sell them.

Once the decision to hire a consultant is made, here are several principles Griffith says providers should pay close attention to:

- **Picking the right consultant.** Consultants have different expertise and can't be all things to all people, warns Griffith. Management consultants may not be appropriate for evaluation opinion, and compensation consultants can't help you deal with new privacy regulations. The team that is assembled within the consulting firm also is important, as well as access to senior people in that firm.
- **Defining the objectives and the time frame.** Providers must structure a reporting mechanism and determine who will oversee the consultant, Griffith says.

He notes that governing board members have overall responsibility for the operation of the organization and may have a duty of supervision if they have reason to suspect wrongdoing by the consultant. Other times, they may hire a consultant if they suspect wrongdoing on the part of management.

Other groups that must be included in an engagement team include management from appropriate disciplines and in-house counsel, especially when the attorney-client privilege may be required or other legal considerations apply.

- **Using an appropriate fee structure.** According to Griffith, there are numerous options for working out the fee structure. While many consultants like the idea of a contingency or percentage of savings, he says that should be avoided if it is a billing or coding consultant.

A fixed fee may be appropriate for a well-defined project, and a daily or monthly rate for a team also may be appropriate. "If you have appropriate timelines in the contract for when each step is to be completed, you can still keep a handle on the costs," he explains. Value billing, which looks at the value being added to the organization, often is the most difficult to quantify.

- **Motivating consultants.** It's important to build in incentives for the consultant to provide services in a timely manner and add expected value. One option is to provide fixed dollar amount rewards for specific defined tasks, deliverables, and goals. "If you tie it to specific tasks rather than revenues generated, it can avoid the consultant placing price of the transaction above other factors," says Griffith.

Discretionary bonuses provide the most flexibility for the client organization, but consultants may be reluctant to enter that arrangement unless it represents a new area of work or geographic opportunity or there is a long-standing relationship with the client, he adds. ■

HFMA releases results of 2001 compensation survey

The average compensation for hospital compliance officers is $79,000, according to the Healthcare Financial Management Association's (HFMA's) 2001 Compensation Survey released last month. Forty percent of respondents say they are eligible for a bonus or profit-sharing.

According to HFMA, 41% have a graduate degree and 53% have a bachelor's degree. Average compensation for the former stands at $83,600 and $77,600 for the latter. Forty-eight percent report directly to a senior administrator, and 45% report directly to a company officer.

The average age of survey participants is 45, with an average of 18 years in health care and three years in their current position. The median number of employees under their direction is one.

The complete HFMA Compensation Survey 2001 is available at http://www.hfma.org/. ■