

# COMPLIANCE HOTLINE™

THE NATION'S ESSENTIAL ALERT FOR HEALTH CARE COMPLIANCE OFFICERS

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PAGE 1 OF 4

## Hospitals scramble to comply with HIPAA implementation

*Compliance departments seek different routes to juggle priorities*

With most compliance officers reporting they now spend roughly half their time working on the implementation of HIPAA mandates, compliance departments are struggling to maintain a focus on their more traditional responsibilities.

Indeed, compliance departments are taking a variety of paths to manage the workload added by the Health Insurance Portability and Accountability Act (HIPAA) without losing their focus on existing priorities such as monitoring and auditing. "The operational side of HIPAA is obviously huge from a compliance perspective," says **Bret Bissey**, chief compliance officer at Deborah Heart and Lung Center in Brown Mills, NJ. "That is taking up a lot of time and effort."

Like many compliance officers, **Britt Crewse**, associate vice president and chief compliance officer of Duke University Health System in

Durham, NC, says he could easily spend all of his time on HIPAA, and trying to figure out how to operate under the new HIPAA rules has been a major undertaking.

However, Crewse says an even bigger challenge has been trying to figure out what areas the compliance department should focus on. According to Crewse, the key is to identify the most critical priorities vs. trying to focus on everything. "You can easily get overwhelmed in

*See HIPAA implementation, page 2*

## Establish effective auditing and monitoring controls

In the wake of nationally publicized corporate accounting scandals, compliance officers often are being tasked with the responsibility of ensuring that their organizations have appropriate internal controls and auditing mechanisms, says **Brent Saunders**, a partner with Price-WaterhouseCoopers in Washington, DC. From a practical standpoint, he says, monitoring and auditing mechanisms offer some of the greatest benefits.

Audit committees and boards of directors also are becoming more attuned to internal controls in corporate compliance, specifically in the wake of the Sarbanes-Oxley bill that recently was passed by Congress, Saunders told participants in a Health Care Compliance Association audio conference Sept. 10. That law gives boards not only a fiduciary responsibility but also a new legal responsibility to ensure the control environment.

**Sheryl Vacca**, director of the national health

*See OIG guidance, page 4*

*See Auditing and monitoring, page 4*

## INSIDE: PRACTICAL STEPS TO BUILD HIPAA INTO OPERATIONS .....3

## HIPAA implementation

*Continued from page 1*

compliance by trying to look at everything," he explains. "Sometimes, you will end up not being able to complete any task, vs. focusing on key areas."

**Allison Manney**, compliance officer at Lovelace Health Systems in Albuquerque, NM, says she has worked hard to keep her department's focus on traditional compliance. "I have waged a huge battle to keep focus on compliance," she asserts. "Once you get through the development stage, it takes a lot of work to keep up the momentum of your compliance program."

Rather than taking ownership of HIPAA, she reports that her department participates on a HIPAA committee. The new department will use the compliance department as a reporting mechanism, which is similar to how the human resource department currently interacts with the compliance department. Among the organization's 3,200 employees, those mechanisms, including the hotline, are highly utilized, and her office views this as an effectiveness measure, Manney says.

**John Harrison**, corporate compliance officer at TMC HealthCare in Tucson, AZ, says that his organization has followed a similar path by developing a steering committee for HIPAA implementation that includes himself, the chief legal counsel, and management information systems (MIS) director. In addition, the organization is using an outside consultant and separate team leaders for transaction sets and security.

TMC also has established a privacy committee with representatives from legal, medical records, patient customer records, and MIS that will act as the receiving group for all privacy issues that arise. Because HIPAA is multidimensional, it is conducive to a committee approach, Harrison says.

Using an outside consultant is a common practice.

According to an on-line survey conducted this summer by the Philadelphia-based Health Care Compliance Association, more than half of the 458 respondents indicated they had sought outside help to address HIPAA privacy compliance. Of the roughly 44% of the respondents who did not seek outside help, 81% indicated they had no plans to seek assistance in the future.

Two-thirds reported they had not sought help to conduct a network security/vulnerability assessment; and of the one-third who did, roughly 76% indicated they do not plan to use them for their overall compliance efforts.

As if HIPAA was not enough, compliance officers report that quality and accreditation also are taking up more time, as is an increasing emphasis on measuring effectiveness.

**Al Josephs**, director of corporate compliance at Hillcrest Health System in Waco, TX, says the responsibilities that have been added to his job include accreditation issues related to the Joint Commission on Accreditation of Healthcare Organizations as well as quality issues. That includes dealing with the Texas Department of Health and handling state inquiries. "I have become more heavily involved in those and actually investigate those cases," he says.

Compliance officers probably are a year away from playing a heavy role in quality oversight, Josephs says. "Some of the quality issues are showing up on the radar screen a little more than they used to from a compliance standpoint in terms of the quality of service and medical necessity as well as conditions of participation," he says.

Josephs predicts this trend will continue as peer review organizations (PRO) transform themselves into quality improvement organizations. Most compliance officers have been involved in the PRO process for payment-error prevention,

*Continued on page 3*

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he points out. "As they move to quality improvement organizations, there will be issues raised that require compliance officers to be in the loop."

**Helene DesRuisseaux**, chief compliance officer at Cedars-Sinai Health System in Los Angeles, says her department already tries to perform its oversight functions with the goal of improving quality of care throughout the organization. "Where we have had the opportunity to tie quality and compliance together, we have actually done that," she reports.

In some cases, she says, the compliance liaison responsible for overseeing the compliance plan implementation for a particular area also is the quality manager. "That is true for us in home care and hospice, and the laboratory compliance officer is the quality improvement officer as well," DesRuisseaux says.

At Duke, Crewse says his organization already had someone in place whose expertise is patient care. That person also is the compliance director for Duke's hospital and reports to him on compliance-related issues, but to someone else on Joint Commission and patient-quality issues. Crewse says he is notified about those issues but is not directly responsible for them. "That has been very effective," he says. ■

## Practical steps to build HIPAA into operations

One of the "threshold questions" in the Health Information Portability and Accountability Act (HIPAA) risk analysis is whether to perform the analysis in-house or use outside consultants. Some entities have outsourced the entire gap analysis, while others have done it in-house, says **Linda Malek**, a partner and chair of the health care practice at Moses and Singer in New York City.

Before beginning a HIPAA assessment process, Malek says compliance officers should educate those within the organization who are going to be the decision makers for implementing HIPAA. "The first thing to do is to give your upper-level staff a general overview of the HIPAA privacy rule," she

says. Those with responsibility for implementing HIPAA should then go to key managers within the organization to make sure they all are given some form of HIPAA awareness training.

According to Malek, one of the most important things about the privacy rule is the rights that it creates. "That will be key to your organization in terms of recording and tracking how you use the information," she says. "You need to be thinking about who it is that is in charge of the inflow and outflow of information and who handles patient requests for information."

Malek says another immediate step in a risk assessment is to start gathering information. She says every organization should assign a point person for gathering this information and set up a repository for HIPAA information. She also recommends setting up a steering committee that includes the chief executive officer, chief operating officer, and someone from information technology and the general counsel's office, because those basically are the people who will handle the information.

Providers also must think about the number of employees who will be affected by the privacy rule, because these are the employees who will have to be trained.

Malek says the next step is to start interviewing high-level personnel. "They are the policy-makers in your organization who set the tone for the rest of the organization," she says. "You need to figure out the chain of reporting to the top-level person, the levels of accountability, and how new policies are disseminated," she says.

According to Malek, this is a useful occasion to get an idea of how the stated policies stack up against staff understanding of those policies. "When you are interviewing people, this is a good opportunity to find out if there is a disconnect between the two, and address that," she explains.

Another important step in the gap analysis process is a walk-through of the facility, says Malek. "This is where you are getting an idea how the information flows in and out of the organization and how the actual practices may or not conflict with stated policies," she says. ■

## Auditing and monitoring

*Continued from page 1*

care compliance practice at Deloitte and Touche in Los Angeles, says one of the ways that boards can execute that responsibility is through development of a strong auditing and monitoring plan or by making sure that their compliance or internal audit department has a strong audit or monitoring plan in place.

Vacca says it's important for compliance officers to recognize the role of boards and the opportunity to enhance their compliance programs and provide an impetus behind the compliance efforts. She says it is useful to use the legal responsibilities imposed by the Sarbanes-Oxley Act to assure that appropriate controls are in place.

It also is important that there be independent leadership who can act without relying on management's initiative, and that they have guidelines and procedures for their own operational functioning, says Vacca.

Boards must be independent in evaluating management company performance and strategy, says Vacca. "The board's role is to be active and independent in the oversight of the corporation that they are overseeing," she explains.

According to Vacca, the audit committee often is the board committee to which compliance programs report within their organization. "Usually, the audit committee is the governing board that has that oversight," she explains.

In a normal board structure, Vacca says there usually is an audit or finance committee that oversees the external auditors who are responsible for auditing the company's financial statements and evaluating the company's system of internal controls. Then there is the oversight of the internal auditors who are responsible to ensure the effectiveness of internal controls and bringing any weakness to management's attention.

Vacca says it is important to recognize the difference in focus between an external audit and an internal audit. Typically, she says, the external audit looks for material financial risk, while the internal audit tends to focus more on the business risk. However, the two go hand-in-hand, she says.

With regard to business misconduct, if compliance program activities must be filtered through layers of management, Vacca says it is less likely

that information will be provided to the committee in a direct fashion.

Vacca says it is important to remind people there is now legal responsibility for the board to oversee compliance. If there are not enough resources to assure that controls are in place, that is a great opportunity for compliance departments to ask for more resources, she says. ■

## OIG guidance

*Continued from page 1*

"The OIG should recognize that it takes hospitals time to learn new payment systems, such as the outpatient prospective payment system, and that such 'learning curves' should be considered when compliance is being evaluated," argues FAH vice president and chief counsel **Michelle Fried**.

The American Health Information Management Association (AHIMA) in Chicago maintains that compliance with Health Insurance Portability and Accountability Act of 1996 (HIPAA) mandates such as electronic transactions and code sets, privacy, and security, also should be incorporated into hospitals' compliance programs and mentioned in the OIG guidance. Compliance with the HIPAA standards for electronic transactions and code sets is required by Oct. 16, 2002, but covered entities can request a one-year extension.

"The extension proviso is not well-understood by many providers and has caused confusion regarding the required compliance date," contends **Dan Rode**, vice president for policy and government relations at AHIMA. "This confusion may result in inadvertent noncompliance with the HIPAA regulations for electronic transactions and code sets."

In its comments, the Chicago-based American Hospital Association (AHA) points out that much of the current OIG guidance is oriented to the start-up of a compliance program.

AHA also argues the guidance should acknowledge the "variety of means" through which training can be accomplished, including approaches that do not require face-to-face participation. "This includes recognizing that requiring a minimum number of hours for each employee to be trained is often cumbersome, costly, and unnecessary," says AHA executive vice president **Rick Pollack**. "Guidance should leave to the discretion of the hospital the extent of training that is needed." ■