HCCA HEALTH CARE COMPLIANCE ASSOCIATION

COMPLIANCE TODAY

Volume Twelve
Number Six
June 2010
Published Monthly

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Health care compliance on a shoestring

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Let's start out by stating the obvious: No health care organization in today's enforcement environment can afford to cut corners on compliance. The senior officers and directors of these organizations (to the extent there are still any of them out there who have not "gotten the memo") must understand that, when it comes to regulatory compliance in the health care industry, there simply is no choice for companies other than to be fully compliant. Billing and reimbursement, third-party business relationships, privacy requirements, and promotional activities are just a few of the intensively regulated and monitored areas that have drawn the interest—and enforcement resources—of regulators. The potentially company-ending consequences of non-compliance make any other course of action unthinkable, unacceptable, and dangerous for those who are charged with the fiduciary responsibilities of governance. Indeed, many well-publicized enforcement actions have been taken against a range of health care companies in recent years, resulting in the payment of vast sums of money and numerous corporate guilty pleas. The expression "Pay me now or pay me later" is more than just a clever play-on-words for those who toil in the health care industry. Where compliance is concerned, it should be regarded as a cardinal truth and guiding principle.

However, it would be foolish not to acknowledge the fact that, in a still-struggling national economy and with health care budgets under severe stress throughout the country, there will be enormous pressure for hospitals and other health care entities to cut funding across the board. And, the reality is that the compliance budget may not escape the axe or at least some delicate work with a scalpel. This may happen despite the warnings of regulators that compliance budgets should not to be cut at all. This may happen despite the best arguments of chief compliance officers and compliance gurus that fully funding compliance is the only intelligent option. Permitting your organization to become non-compliant is obviously not a realistic option for any clear-thinking health care executive or director. But, that is not to say that every organization will continue to enjoy the same resources in achieving compliance. The reality is that some health care organizations may demand that all their employees, including their compliance personnel, do more with less. How can that be done?

When it comes to compliance, the answer is: Very carefully. To the extent that chief compliance officers find themselves in the unwelcome position of being forced to stretch fewer compliance dollars further in order to achieve the same level of compliance, due care must be taken to manage those funding cuts in a thoughtful way. The main purpose of any compliance program is to mitigate the risk of non-compliance while ensuring that any existing compliance problems are detected early enough to permit a timely corrective response by the organization. Any spending cuts that sacrifice this basic operational imperative must be resisted.

That means that an organization cannot simply stop all expenditures on activities that are indispensable to an "effective corporate compliance program," as that concept has been addressed in the Federal Sentencing Guidelines and various other industry guidance materials published by the United States Department of Health and Human Services. The seven elements of an effective compliance program are not optional. They do not get suspended in trying economic times like alternate side of the street parking does in a snowstorm. Accordingly, in stretching fewer compliance dollars, an organization still must ensure an effective compliance infrastructure that will include:

- Standards, policies, and procedures
- Compliance governance and infrastructure
- Training and Education
- Effective lines of communications and reporting systems
- Internal monitoring and auditing, background checks, and exclusion/debarment checks
- Incentives to encourage compliance, and disciplinary measures for non-compliant behavior
- Prompt response to non-compliant behavior and swift corrective action

But, this still begs the core question: Can all of this be done more efficiently and (let's just

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say it out loud) more cheaply? The answer depends, in part, on how much the organization is already doing in the compliance area. If the organization is doing next to nothing on compliance issues, it obviously should be ramping up that part of its operations and should not, under any circumstances, consider the possibility of doing even less. If, however, the organization has a robust compliance program, but the chief compliance officer has been handed a more miserly budget for the new fiscal year, then choices must be made and those choices need to be made wisely.

There really is no shortcut to developing effective policies and procedures and making sure they are current. Nor is there any shortcut to having an effective compliance reporting structure and vesting an individual, such as a chief compliance officer, with overall responsibility for managing the compliance program and elevating compliance issues, as appropriate, to governing authorities within the organization. It is very important to have a compliance officer who is 100% committed to compliance and does not have any other duties. Likewise, the board of directors of every health care organization today has no alternative but to make compliance a priority and to keep itself informed of compliance issues and the operation and effectiveness of the organization's compliance program. But, these are mostly structural requirements. The real expense is incurred in trying to determine whether the compliance program is actually working and in performing the monitoring/auditing work necessary to detect any problems.

Without that self-monitoring function, a compliance program is not worth the paper on which it is printed. And yet, those activities can be expensive, depending on how often they are performed and the manner in which they are undertaken. Outside health care consultants are not cheap, but they are knowledgeable and can be extremely useful in assisting health care organizations perform compliance audits. Some organizations without adequate internal audit resources have no choice but to seek that outside assistance, while other organizations may have the ability to redirect internal resources to assume at least part of that responsibility and reduce cost. In addition, even if some outside assistance is required, there may be methods of conducting the audit less expensively through more efficient sampling methods that can be developed with the input and expertise of such third-party consultants.

When budgets are cut and auditing and monitoring still need to take place, there are several ways to cut down on the expense of outside audits. One is, if resources allow, performing audits internally and using outside consultants to test a percentage of what was tested internally to determine the error rate on the internal audits. Another is to have baseline audits performed by a third party and then perform ongoing audits internally. Within your organization, some departments may have staff who have time to assist in self monitoring. You can also use staff from other departments to assist in your monitoring—just make sure that people are not testing their own work.

In considering those compliance activities that provide "the biggest bang for the buck," educating and training employees is near the top of the list. It is a relatively cheap way to substantially mitigate risk across your organization, and it should not be sacrificed under any circumstances. Dollars, however, might be saved even in this compliance area to the extent the organization currently outsources these activities and could perform more of them in-house. In making this choice, however, care must be taken by the organization to ensure that the individuals who will be charged with the responsibility of training others (whether these individuals reside in the Compliance department or in-house Legal department) truly have the expertise and talents needed to perform this function. Delegating this task to unqualified individuals just to save money is a recipe for disaster. When it comes to educating staff on key compliance issues, an organization cannot afford to be "penny-wise, pound foolish."

Another area of potential savings involves the elimination of administrative redundancies within the compliance infrastructure. If there are audits or testing being done in the Health Information Management department on coding issues or specific coders, you can use some of those audits for compliance purposes. Other departments that may be performing audits that can help in meeting your compliance objectives are Internal Audit, the IT department, and Human Resources. You can also enlist the aid of the Education department to perform compliance training. Items to consider are internal newsletters and using the Intranet to educate and train employees. This area may already be set up in the organization and may not need to be re-created in the Compliance department.

Conclusion

If your Compliance department is being handed a reduced budget without any reduced expectations for achieving compliance, do not despair. If you take a hard look at your compliance infrastructure and operations, and closely examine how your compliance dollars are currently being spent, there may be ways to increase efficiencies without needlessly sacrificing the vigilance expected and required of all health care organizations in today's regulatory environment. ■