

## Compliance Today – December 2018 Compliance program annual review: A game plan

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A compliance program evaluation is recommended (and expected) by federal enforcers. Two sources of federal guidelines are recommended for compliance program reviews. Although the focus of this article is compliance program annual reviews, the same methods are applicable to baseline assessments for new compliance programs.

First, the Federal Sentencing Guidelines (FSG) are used by federal judges when assessing sanctions for federal crimes, such as violations of the False Claims Act or Anti-Kickback Statute. The FSG are not mandatory, but they reflect the government's expectations, and it would be wise to adhere to them. Section 8B2.1(2)(b)(5)(B) of the Guidelines states, "The organization shall take reasonable steps ... (B) to evaluate periodically the effectiveness of the organization's compliance and ethics program."<sup>[1]</sup>

The second federal source of guidance is the Health and Human Services (HHS) Office of Inspector General (OIG) Compliance Program Guidance documents (CPGs). The OIG consistently recommends that healthcare compliance programs include regular review. For example, the CPG for Nursing Facilities states, "...the OIG recommends that all nursing facilities evaluate their current compliance policies and procedures by conducting a baseline assessment of risk areas, as well as subsequent reevaluations."<sup>[2]</sup>

As another example, the OIG's CPG for Hospitals states, "An effective compliance program should also incorporate periodic (at least annual) reviews of whether the program's compliance elements have been satisfied."<sup>[3]</sup>

For some providers, compliance program reviews are mandatory. A compliance program review is required for nursing facilities. The Affordable Care Act mandated compliance programs for all nursing facilities and requires an annual review:

(e) Annual Review. The operating organization for each facility must review its compliance and ethics program annually, and revise its program as needed to reflect changes in all applicable laws or regulations and within the operating organization and its facilities to improve its performance in deterring, reducing, and detecting violations under the Act and in promoting quality of care.<sup>[4]</sup>

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