

## Report on Medicare Compliance Volume 31, Number 26. July 25, 2022 DOJ Certification Raises CCO 'Risk Profile'; Consider 'Your Own Due Diligence Checklist'

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By Nina Youngstrom

A compliance officer's certification that her organization was compliant with applicable laws and regulations as part of its false claims settlement with the Department of Justice (DOJ) has come back to bite her. The organization is considering a self-disclosure that implicates the certification, a cautionary tale for other compliance officers now that DOJ is expected to require chief compliance officers to sign certifications that their organization's compliance program is "reasonably designed and implemented to detect and prevent violations of the law" and functioning effectively in the resolution of corporate criminal cases. That language has already made an appearance in Glencore International A.G.'s May guilty plea to Foreign Corrupt Practices Act violations and in speeches by top DOJ officials.<sup>[1]</sup>

The new DOJ compliance certification "compounds the risk profile of a compliance officer," said former prosecutor Robert Trusiak, who represents the compliance officer involved in the possible self-disclosure. The conundrum for compliance officers is they are "one step removed" from settlement negotiations with DOJ but could face criminal penalties for failures in their compliance program because of their signature on that certification, he said.

"A hard job just got harder," said Trusiak, a former compliance officer. "It's time you undertake your own due diligence checklist to address your concerns." He said it should include having the board of directors sign off on the minutes of compliance committee meetings, keeping "mirror" documentation of higher-risk transactions, and determining where they stand under the company's directors & officers (D&O) liability insurance policy.

The new DOJ policy also would require companies that resolve criminal cases to submit annual self-reports on the state of their compliance programs, and may extend to the CEO and chief compliance officer certifying "that all compliance reports submitted during the term of the resolution are true, accurate and complete," Assistant Attorney General Kenneth Polite said in a March speech.<sup>[2]</sup>

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