

## Compliance Today – March 2023



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## Compliance liaisons: Who and why

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A question facing every compliance and ethics program (“compliance program”) is how to best structure the program to achieve optimal effectiveness (i.e., how to structure it to prevent and detect fraud, waste, and abuse, which is the objective) most effectively. For multisite organizations, one structure option involves the use of compliance liaisons. Compliance liaisons are generally not employees of the compliance program but are individuals with an operational role—sometimes in a higher-risk department or off-site location—that function as a liaison between the compliance program and operations stakeholders throughout the organization. Compliance liaisons can help bridge a gap over which many compliance programs struggle: practical engagement with and impact on operations’ departments and personnel. Compliance liaisons—while not employees of the compliance program—have a formal or informal “dotted line” to the compliance program to help the compliance program function more effectively and have influence on operations staff and teams “in the field.” Implementing a compliance liaison model effectively can increase engagement with individual departments and/or off-site facilities. Some may feel very removed from the compliance program because of their physical distance from or lack of engagement with the compliance program.

While some types of organizations have chosen a compliance liaison model to promote compliance program effectiveness for skilled nursing facility (SNF) operators with five or more facilities, this is now a requirement of participation under Phase Three.

### The regulation

The Centers for Medicare & Medicaid Services (CMS) first published the Requirements of Participation for long-term care facilities in 1989. The Requirements were recently updated in a rule that became final on November 28, 2016.<sup>[1]</sup> These recent updates to the rule include modernization of requirements “to reflect the substantial advances that have been made over the past several years in the theory and practice of service delivery and safety.”<sup>[2]</sup> In addition to updates based on theory and practice, the rule also includes—among other things—specific compliance program requirements found in section 483.85 of the rule. While based on the traditional seven elements of an effective compliance program, the prescriptive requirements of the final rule have several nuances to tailor the elements to the SNF environment. Different requirements are also based on the organization’s size, resources, and sophistication. Organizations with five or more facilities have certain additional requirements, including designation of a compliance officer at the corporate level and designation of compliance liaisons at the facility level.

While the regulation requires the compliance liaison role for organizations with five or more facilities (while not required for an organization with less than five facilities, it may still be a best practice to implement), the role is not a defined term; there are not prescriptive job responsibilities included in the rule beyond “[a]t a minimum, these liaisons should be responsible for assisting the compliance officer with his or her duties under the operating organization’s program at their individual facilities.”<sup>[3]</sup> ( 80 FR 42220 ). Each organization must determine the compliance liaison’s qualifications, job description, and roles and responsibilities.

## Roles and responsibilities

Before proceeding with the qualifications and considerations when selecting compliance liaisons, it is important to identify the compliance liaison’s responsibilities in assisting the compliance officer with the program at the individual facilities. Since the objective is to assist the compliance officer with the program at the facility level, the organization should contemplate what duties the compliance liaison would have that could extend the reach of the compliance officer and increase the impact and effectiveness of the compliance program at the facility level. Obvious responsibilities include those that the compliance officer or staff person would have if they were present in the facility; the compliance liaison is, in effect, the in-person, “boots on the ground” extension of the compliance program. Responsibilities may include:

- Serving as the in-person resource for compliance-related issues and questions
- Representing the compliance program in facility-level meetings
- Coordinating with the quality assurance and performance improvement (QAPI) committee in-person, including one-on-one and in-group settings, and communication about and promotion of the compliance program including program updates or initiatives
- Encouraging transparency and reporting
- Helping with in-person portions of investigations
- Performing monitoring of higher-risk functions in accordance with the work plan and/or auditing and monitoring plan
- Incorporating the facility and hazard vulnerability assessments into the work plan
- Conducting in-person compliance training

In addition to the duties beneficial for the compliance liaison to perform as the in-person extension of the compliance program, the liaison can participate in compliance risk assessment initiatives; it can provide insights into the effectiveness of the program at the facility level and, further, make recommendations for needed compliance program evolution considering lessons learned.

## Qualifications for the compliance liaison

As discussed, the rule indicates CMS believes each organization needs the flexibility to determine who should be the compliance liaison, and what should be the qualifications, duties, and responsibilities of the compliance liaison. This flexibility allows each organization to consider the best approach to ensure compliance program effectiveness and tailor the role according to organizational/facility needs and resources.

- **Time** – When considering which roles or individuals may fit as the compliance liaison, the organization should ensure that appropriate time can be spent on compliance duties. It may be beneficial to consider

which roles are already engaged in quality or compliance-like activities such as training, attending quality or compliance meetings, conducting monitoring or investigations, etc., as the compliance liaison duties should dovetail into work that may be already ongoing. To ensure survey success and promote compliance program effectiveness, it is essential to confirm that compliance liaisons have sufficient time to fulfill the expectations of the role.

- **Expertise** – In addition to time, the organization should consider if there are specific roles or individuals with experience in compliance or with a particular skill set that would lend itself to the duties required of the compliance liaison. These may include auditing or investigation skills or experience, or experience performing quality or other regulatory functions.
- **Soft skills** – In order for a compliance program to be successful, it is essential that compliance personnel—including compliance liaisons as an extension of the compliance program—have the right personality for the job. Compliance representatives must be approachable, good communicators, and able to build rapport with those around them to promote the engagement and buy-in that are vital for compliance program effectiveness.
- **Interest** – In addition to considering time, expertise, and soft skills, an organization should evaluate whether facility-level individuals are interested in the compliance liaison role (and whether this is a growth opportunity). Interest in and enthusiasm about compliance and the role can make a tremendous impact (may be a way to help develop future compliance program leaders) and can pave the way for success.
- **History with compliance program** – Finally, the organization should consider the potential liaison's history with a compliance program. This history could either be poor or promising. Individuals known to have lax compliance and ethics standards or who have tried to skirt compliance or quality responsibilities would not be ideal candidates for the compliance liaison role. In fact, appointing a person who does not champion a culture of compliance will likely backfire, resulting in a lack of willingness to report issues or collaborate with the liaison. On the contrary, appointing liaisons who embody the values of the compliance program and have a track record of positive compliance engagement, including timely completion of compliance training, encouraging reporting and transparency, being involved in past compliance initiatives, etc., will further promote program success.

## Potential compliance liaisons

There are several potential facility-level roles that could be considered for the compliance liaison role. Here we present options as well as potential benefits and drawbacks of each:

- **Nursing home administrator/executive director** – One of the most straightforward options is the administrator/executive director of the facility. The individual in this role will be the facility's highest-ranking individual and report directly to the board. Both considerations are mentioned when evaluating a compliance officer, so it may be relevant when choosing a compliance liaison. Additionally, the individual will already attend the necessary meetings and have the appropriate authority.
- **Assistant administrator** – This may be a good option if a facility is large enough to have this role. The individual in this role would be a high-level community leader and have access to the board. Further, this individual would have an enterprise view of the facility and be able to take a holistic view of the community. Finally, this individual would already be at the necessary meetings, familiar with facility policies and procedures, and have the appropriate influence within the community.

- **Director of nursing** – If you have a community that is a little weaker or needs more help on the clinical side, you may want to consider the director of nursing for the role. The director of nursing would be very knowledgeable regarding the facility’s clinical practices, survey challenges, and care issues. Given the government’s focus on egregious, insufficient, and/or ineffective care, a director of nursing could be a good choice. You will want to weigh the clinical advantages against the potential lack of visibility to other departments. The director of nursing will also typically not have a direct reporting line to the board and most likely would report directly to the administrator/executive director. This lack of a direct reporting chain may mean this is not the best route.
- **Staff development coordinator** – This could be another good option if your facility has a staff development coordinator. Since one of the main areas of compliance is training and education, someone with this skill set could be ideal. Additionally, the individual in this role would have the necessary soft skills to engage and interact with staff. However, the weaknesses here are likely that they do not have an enterprise view of the facility, direct access to the board, and/or report directly to the board.
- **Human resources** – This may seem like a logical choice for a few reasons, but it may not be appropriate. This role seems logical because the individual in this role will be used to handling investigations, making reports, and having access to necessary systems. Additionally, a large volume of compliance hotline calls is related to human resources issues. However, depending on how your facility is structured, this may not be a leadership role at the facility level. Further, this role would not report directly to the board and would likely report to the administrator/executive director.
- **Minimum data set coordinator** – A unique choice would be to utilize your facility’s minimum data set coordinator as the compliance liaison. You may want to consider this role if your facility has concerns about billing or coding. The individual in this role would likely have the most knowledge of these areas at the community level. Moreover, the individual in this role is likely coordinating with multiple departments to get the information they need. The drawback of utilizing this individual is their authority (i.e., not a position of leadership within the facility, no board access, and likely reporting line).

## Potential challenges

There are some specific challenges that will likely come into play as the organization works to operationalize the compliance liaison requirement. First, determining whether the compliance liaison should be the same title at each facility (i.e., the nursing home administrator across the board), or whether to have different titles appointed as compliance liaison in each facility depending on expertise, interest, personality, facility needs, etc. It may seem administratively simpler to have a consistent approach across all facilities. However, it may be worth the extra complication to customize the approach in each facility depending on facility and team member specifics.

Second, navigating conflicts of interest. The compliance program and officer should be independent of operations to ensure objectivity. However, most, if not all, compliance liaisons are primarily operations team members. Compliance liaisons should be educated about this seeming duality and what to do if/when their operations’ responsibilities collide with their compliance responsibilities.

Another potential challenge is deciding if the additional duties warrant additional compensation. Certainly, budgets and reimbursement concerns will be constant considerations, but providing even a small amount of extra compensation may further encourage compliance liaisons in their roles and compliance duties, which have been added to their primary duties, and promote both employee satisfaction and retention (which pays dividends in the long run!).

Finally, the biggest challenge will be time. Any role you select and whether you vary that by facility time will be a

challenge. Each of these individuals is already performing a full-time job, and now additional responsibilities are added to their role. You will need to carefully balance what you are asking of these individuals (and in addition to training/education/resources, provide forms, meeting outlines, guided questions, primers, etc.) to help ensure that the compliance tasks are completed and not disregarded for the individual's other responsibilities. One possible way to help with this is to verify compliance is part of the individual's annual evaluation (as provided in the Requirements of Participation) and as previously mentioned, potentially adjust compensation accordingly.

## Next steps

In addition to identifying the best roles or candidates for compliance liaisons, organizations should also prioritize several other necessary steps to lay the foundation for success:

- **Job description** – Job descriptions should be written clearly so that both the compliance liaisons and the organization understand the role and its responsibilities.
- **Resources and authority** – The organization must ensure the compliance liaison has appropriate resources to perform the required duties. While this certainly includes providing the time necessary to perform the functions, this may also include essential budget dollars, software access, people assistance, etc.—depending on the particulars of the job description. Additionally, the organization should ensure clear communication about the role and authority of the compliance liaison as an extension of the compliance program. The compliance liaison will not be able to fulfill the required duties without being granted appropriate authority and ensuring the organization and team members understand that authority.
- **Initial and ongoing training** – The compliance program will need to develop and implement a compliance liaison training plan that guarantees initial training of all compliance liaisons as well as ongoing training. Communication of clear expectations and provision of effective training will help align compliance liaisons across facilities and promote effectiveness.
- **Communication and engagement plan** – Finally, the compliance program should develop a plan for ongoing communication and engagement with compliance liaisons to ensure all liaisons understand and are bought into compliance program priorities as the program, organization, and regulatory landscape evolves.

## Conclusion

For SNFs, ongoing compliance specifically related to the compliance liaison obligation meeting the requirements of participation should blend regulatory compliance with the needs and culture of the organization and its facilities. Each organization and compliance program should determine what will work best in their organization; the rule provides broad expectations for the compliance liaison role that must be pragmatically tailored to the particular organization.

If you are not in a SNF with five or more facilities and therefore do not have the specific requirement to utilize compliance liaisons, consider whether the compliance liaison model “to assist the compliance officer with the program at each facility” is an approach that could improve operational and location-specific engagement, widen your compliance reach, and ultimately increase the effectiveness of your compliance program.

## Takeaways

- The skilled nursing facility (SNF) Requirements of Participation allow for flexibility in who is selected as a compliance liaison and how they help the compliance officer with the compliance program.

- There is no clear right or wrong answer on who would make the best compliance liaison.
- The individual(s) selected for this role should be based on the facility's needs.
- Compliance liaisons can help extend the reach and engagement of the compliance program to multiple locations.
- While compliance liaisons are required for SNF organizations with five or more facilities, compliance liaisons can be part of the compliance program strategy in any kind of healthcare organization.

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1 Medicare and Medicaid Programs; Reform of Requirements for Long-Term Facilities, 81 Fed. Reg. 68,688 (Oct. 4, 2016) , <https://www.govinfo.gov/content/pkg/FR-2016-10-04/pdf/2016-23503.pdf>.

2 Medicare and Medicaid Programs/ Reform of Requirements for Long-Term Facilities, 81 Fed. Reg. 68,688 .

3 Medicare and Medicaid Programs/ Reform of Requirements for Long-Term Facilities, 81 Fed. Reg. 68,688, 68,816 .

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