

## Report on Medicare Compliance Volume 33, Number 29. August 12, 2024 OIG: CCO Reporting to CEO May 'Conflict With Doing the Right Thing'

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By Nina Youngstrom

When health care organizations enter into corporate integrity agreements (CIAs) with the HHS Office of Inspector General (OIG), they're required to appoint a compliance officer—if they don't already have one—and give that person the authority and independence they need to help accomplish the goals of the CIA, which is a mandatory compliance program.

"Compliance officers should be part of senior management and not subordinate to senior management," said OIG Senior Counsel Adam Ribner. "It's a requirement in CIAs that the compliance officer can't report to the legal or financial branches of the organization. We always got a little pushback from organizations not under CIAs. They said, 'That may be optimal but if we are not under a CIA, it's not something we want to do.'"

But the idea that it's just a suggestion was corrected in OIG's November 2023 *General Compliance Program Guidance*, Ribner said at the HCCA Compliance Institute April 15.<sup>[1]</sup>

"We made very clear our expectation for an effective compliance program" included having a compliance officer who doesn't report to the general counsel or CEO, Ribner said. "The reason for that is the duties of the legal and financial departments, when push comes to shove, can sometimes conflict with doing the right thing, which is supposed to be the mandate of the compliance officer." While not reporting to legal or finance is a CIA requirement, "we strongly recommend" voluntary compliance programs follow suit, Ribner said.

He noted that OIG strongly recommends compliance officers have "a solid line to the board with a dotted line to the CEO but we often see the inverse."

At smaller organizations without a dedicated compliance officer, the person in that role may have conflicting tasks, Ribner noted. "The compliance officer can't have operational responsibilities" (e.g., billing and coding). "You can't direct how something should happen and then be able to self-audit the operations on a day-to-day basis."

Ribner walked through other CIA requirements and how they may be applied to voluntary compliance programs.

CIAs require board and compliance committee oversight of the compliance program. Compliance committee oversight is more operational, Ribner said. "It's expected to collaborate with the compliance officer to ensure the appropriate functioning of the compliance program." CIAs have become more specific in their expectations of compliance committees, including their assistance with risk assessments, developing a training plan and writing policies. "The committee is not simply a report-out function," Ribner noted. Compliance committee members are required to certify their departments have maintained compliance with laws and regulations and the CIA.

"The board, on the other hand, is much more of an oversight function," he explained. CIAs usually require annual board resolutions that it has overseen the compliance program and met at least quarterly with the compliance officer. For example, one hospital's recent CIA states, "The Board has made a reasonable inquiry into the operations of [the hospital's] compliance program, including the performance of the Compliance Officer and

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the Compliance Committee. Based on its inquiry and review, the Board has concluded that, to the best of its knowledge, [the hospital] has implemented an effective compliance program to meet Federal health care program requirements and the requirements of [the hospital's] Corporate Integrity Agreement with the Office of Inspector General of the Department of Health and Human Services.”<sup>[2]</sup>

Next up is policies. “We require an entity to show us their compliance policies,” Ribner said. They also must be available to employees. “It does no one any good if you have a suite of policies but they’re not accessible to staff at any given moment.” Everyone in the organization should understand it’s under a CIA and how an effective compliance program works, Ribner said. “Tone at the top is important but front-line workers are the first indicators that something is going wrong.”

### **Some Policies May Be ‘More Robust’**

A CIA may require “more robust” policies in some areas, such as the Stark Law and Anti-Kickback Statute (AKS), “depending on the nature of the conduct that landed the entity in a CIA. The expectation is the policies are enforced. Having them on the books accomplishes nothing if they’re not enforced. We like to see compliance with policies being made part of the entity’s annual performance appraisal so everyone is aware how important it is to abide by” the policies.

Organizations under CIAs also must come up with training plans. OIG looks for “sufficient information being pushed out to all employees” as well as specialized courses for certain audiences (e.g., coders, medical staff). The length of training plans is material. “It’s a basic indicator of how substantive that course is,” he said. OIG also looks at the training schedule and format. How often is the course given and what’s the medium? Is it a yearly, one-hour in-person session or a 10-minute course that employees take on their own? As for substance, training must cover the elements of an effective compliance program. “When an organization is under a CIA, it’s because the organization went off the rails to begin with,” Ribner noted. “As part of that corrective action, we want to make sure all the employees understand the organization is under a CIA and what a CIA is. That helps drive compliance from the front line up.” The CIA may require more “robust” courses on Stark, AKS, conflicts of interest or other areas, depending on the nature of the underlying conduct that led to the CIA.

### **Board Training is Required**

Boards also must attend training with respect to compliance-program oversight. The CIA requires training of new board members within 90 days and annually after.

CIAs require a periodic assessment of the “sufficiency and efficiency” of training. Does the organization have the right courses for relevant employees, and does it gauge the effectiveness of its training? Post-training quizzes are one way to show efficiency.

CIAs also require a risk assessment process to identify and prioritize “the compendium of risks facing your organization,” Ribner said. “It allows you to prioritize because we live in a world of limited resources.” Guided by the risk assessment, organizations under CIAs must develop work plans, perform audits and, if necessary, implement corrective action plans.

“The expectation is you track those corrective action plans to completion,” he noted. “It’s not OK to say this is a big risk area and we came up with the plan. Once corrective action plans have been implemented, then the expectation is you reassess the risks to determine whether the actions you have taken have mitigated the risks for those various areas.”

1 U.S. Department of Health and Human Services, Office of Inspector General, *General Compliance Program Guidance*, November 2023, <https://bit.ly/3FREWGe>.

2 U.S. Department of Health and Human Services, “Corporate Integrity Agreement Between the Office of Inspector General of the Department of Health and Human Services and Cape Cod Hospital,” accessed August 8, 2024, <https://bit.ly/3yzjA0r>.

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