

MANAGED CARE

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Tips for a New Managed Care Compliance Officer

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One of the great hurdles for someone moving into a new position is meeting the expectations of those who hired him or her. Anyone hired to be a compliance officer should know what he is getting into. Entering a new job without fully understanding what it entails may result in getting more than was bargained. Unfortunately, many find they are inheriting a host of problems that was not known or mentioned at the time of hiring.

There could be many reasons why the vacancy occurred. It could simply be a retirement; however, there are other possibilities for why someone left, including (a) the incumbent was not qualified to meet the challenges of the job; (b) there were too little resources available to meet the demands of the job; (c) senior management and the board placed unreasonable expectations; (d) overly stressful relations and tensions existed between the compliance office and program managers; and/or (e) there were indications of enforcement agencies focusing in the direction and the decision to get out before the whole thing blew up. These are things that would be nice to know.

Everyone who applies for a vacancy is told that there is a fully functioning and effective compliance program; this may or may not be true. In any case, the important point is that in a short time the new compliance officer will own whatever problems exist.

The real challenge for new compliance officers is what can be done to get on top of issues

before they get on top of them. One answer may be to think about those who assume responsibility for a large inventory. No one in their right mind would sign for inventory without having an audit to determine what is there and what may be missing. To sign for inventory without such an audit would pass the responsibilities for any shortages to the new person.

Similarly, new compliance officers should have an independent review to determine the status of the compliance program they are inheriting. By doing this, all the flaws, weaknesses, and exposures will be identified as something belonging to the past while providing a road map of what needs to be done to ensure the program is on the right track. The questions to be asked are whether there has been ongoing monitoring and auditing of the compliance program, and if so, what have been the results.

Ongoing Monitoring and Auditing

Having an independent review is not just a good idea to help establish the state of the compliance program and what may be needed; it is also something called for by the U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) as a standard practice in any effective program. The OIG has been urging in its compliance guidance ongoing monitoring and auditing of all program risk areas. All program managers are responsible for ongoing compliance monitoring of their areas of responsibility. This means they

must ensure all written guidance is up to date; their staff has been trained on them; and there is monitoring to verify the requirements and standards are being followed.

What they cannot do is ongoing auditing. This needs to be done by individuals, who are independent of the program that can objectively verify ongoing monitoring is taking place and validate that the controls instituted are effective in achieving the desired end and conforming to the compliance program requirements. Where reviews uncover discrepancies, corrective actions can be carried out, providing evidence of efforts to ensure that the program is operating properly. It is fitting and appropriate for the compliance officer to play a significant role in ensuring proper ongoing auditing and monitoring of program high-risk areas.

Independent Assessment of the Compliance Program

What is frequently forgotten is that there is a second type of ongoing auditing and monitoring called for by the OIG. Like other program managers, the compliance officer bears the responsibility for ongoing monitoring of the compliance program. This is to ensure the structure of the program has been put in place; all proper written guidance is in place; employees have been trained on them; and generally everything is operating as it should. However, as with all other programs, the ongoing auditing cannot be performed by the compliance office staff. They lack meeting the independence and objective standards.

According to the OIG, an effective compliance program should incorporate periodic (at least annual) reviews of whether the program's compliance elements have been satisfied.¹ The OIG also emphasized the importance of evaluating the effectiveness of a compliance program through performing regular reviews of the effectiveness of its compliance program and identifying certain factors that effective compliance programs often contain. The expectation is that compliance programs should undergo periodic independent reviews and

evaluations by recognized experts to verify and validate the program is operating effectively. They should certify that they perform their work according to the General Accountability Office "Generally Accepted Government Audit Standards" (GAGAS) for performance audits² and evaluations for independence and objectivity.

If an independent evaluation of the compliance program³ has not been done in the recent past, it is advisable for any compliance officer new to the job to request such a review. This would have the double benefit of meeting the ongoing auditing standard while providing an "inventory report" on the status of the program. Based upon findings and recommendations, the compliance officer will be armed to develop a comprehensive work plan to improve the program to address any program weakness with recommendations requiring corrective action measures.

The evaluation report will be by an outsider and, as such, will likely carry more weight than the new compliance officer making his or her own assessment with findings and recommendations that may be viewed as self serving. The outside expert's report can assure that the pre-existing problems and conditions belong to the past and will provide an excellent platform for the compliance officer to develop a sound work plan and seek needed resources to do the work.

It is far better to evidence and be able to present the actual status of the program at time of hire than to come at a later date complaining about deficiencies encountered in the job. The smart move is to let the outside reviewer state the problems and have the new compliance officer focus on the solutions. The smartest move, if possible, is negotiating having such a review as a condition of accepting the position.

Tips on Selecting Experts

There are a number of considerations in selecting an outside party to perform an independent compliance program evaluation, including:

- *Ensuring those who would do the work are truly experts.*⁴ It is critical to ensure the individuals doing the work have the personal experience, both as providing consulting services and having worked in the trenches as a compliance officer. It is always advisable to seek references (at least three) regarding the quality of the work provided in the past.
- *Methodology to be employed will generate the best results.* It is important that those selected to do the work will do more than a checklist review of the seven elements of the compliance program, often referred to as “painting by the numbers.” A “slap dash” checklist will provide little use and may be just a waste of time and money, although following an established protocol is important. The program evaluation process should include both detailed examination of compliance-related documents as well as numerous interviews of executives, board members, program managers, and selected others. In many cases, experts may employ a survey of employees regarding their knowledge of the compliance program and what is expected of them.
- *Determining scope of work.* To be truly useful the review should certainly include verifying the existence of the elements, but that will provide little insight as to the level of effectiveness of the program. It should, however, focus on the ongoing monitoring and auditing of all the risk operations; metrics that evidence program effectiveness; level of understanding and commitment from executive leadership and the board. The scope of work should demand a more in depth analysis and assessment, not just verification that there is a code, key compliance policies, charters for executive and board-level

compliance committees, existence of a hotline, compliance training of employees, et cetera. It should take the temperature of the program and a sharp look at how it is operating in fact. The more robust the review and detailed findings and observations, the better it is for the compliance officer in gaining support for moving things forward.

- *Cost for doing the review.* Cost is also important but will largely depend on the other factors, such as the quality of the firm selected, scope of work, and methodologies employed. It is important to ensure in any bid process to compare expertise, methodologies to be employed and proposed scope of work, and not price alone. Remember that the cheapest price may be no bargain; as the old adage says, “You get what you pay for.” The best bargain is getting a very credible and useful result that can be used to move forward.

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Endnotes:

1. OIG Compliance Program Guidance for Medicare+Choice Organizations Offering Coordinating Care Plans, November 15, 1999.
2. gao.gov/assets/590/587281.pdf.
3. www.compliance.com/services/compliance-program-services/compliance-program-effectiveness-evaluations.
4. For more guidance, see www.compliance.com/managed-care-advisory-services-compliance.

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