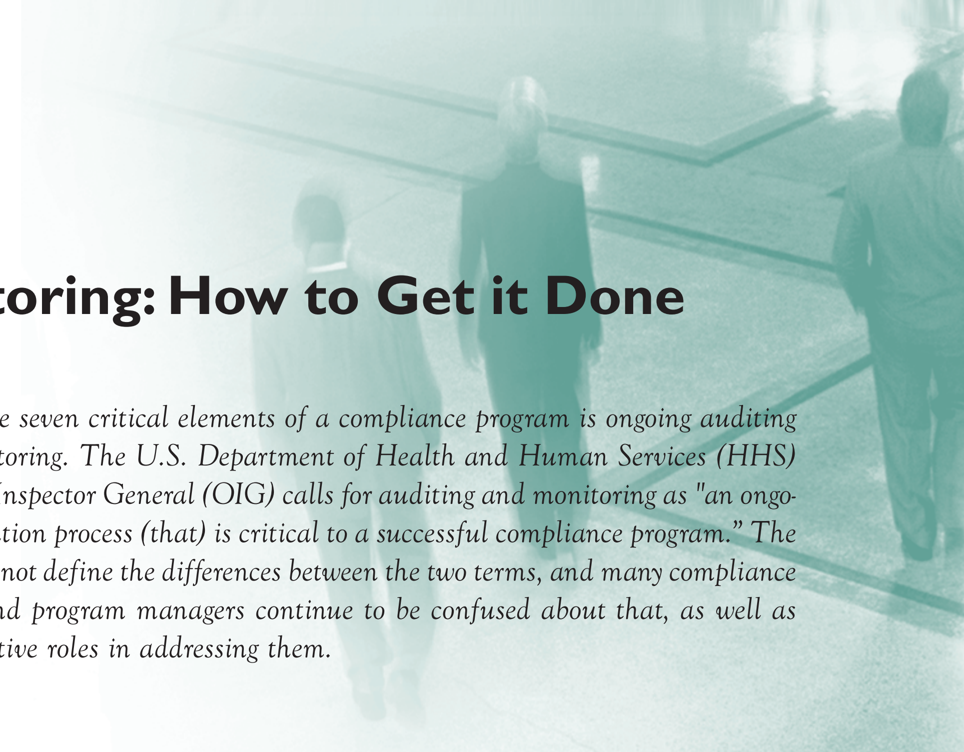

On The Front Lines

# Auditing and Monitoring: How to Get it Done

**Steven Forman, CPA**

*One of the seven critical elements of a compliance program is ongoing auditing and monitoring. The U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) calls for auditing and monitoring as "an ongoing evaluation process (that) is critical to a successful compliance program." The OIG does not define the differences between the two terms, and many compliance officers and program managers continue to be confused about that, as well as the respective roles in addressing them.*

What the OIG does say in its Compliance Program Guidance for Hospitals is that auditing and monitoring should be:

- an ongoing process;
- thorough with regular reporting on it to senior officials, including the board;
- regular, periodic audits by qualified people focusing on programs with substantive exposure to government enforcement actions; and
- ensuring compliance with specific federal, state, and internal rules and policies.

For purposes of this article, it may be useful to define the difference between these two ongoing functions. First, ongoing monitoring is the program managers' responsibility. They are the ones most familiar with their own operations and should be charged with identifying risk areas of their responsibility; developing appropriate internal controls, policies, and procedures; and monitoring them to verify they are being followed.

Whereas monitoring should be done by program managers, the ongoing auditing of those operations needs to be performed by parties independent of those operations. This is to ensure objectivity in performing the audit reviews. The objectives of these reviews are also different from monitoring. Whereas monitoring is to ensure that policies and procedures are in place and are being followed, auditing is to determine whether the monitoring program is operating as it should and that policies, procedures, and controls adopted are adequate and their effectiveness is validated in reducing errors and risks.

Regardless of how an organization goes about its ongoing monitoring and auditing, the major challenge everyone faces is how to get it done properly. The universe of compliance risks is considerable and getting bigger. All you have to do to be convinced of this is to look at the OIG compliance guidance documents, which highlight some key high-risk areas, then add risk areas identified in the annual work plan and other advisory letters. If that is not enough, you also need to consider risks identified by the Centers for Medicare & Medicaid Services (CMS) and its contractors, recovery audit contractors (RACs), zone program integrity contractors (ZPICs), et cetera. Needless to say, the mountain of risks begins to resemble Mount Everest and, like the mountain, continues to grow.

The compliance officer should not be directly involved in ongoing monitoring other than to identify potential areas of risk or concern and to track that appropriate follow-up was made in response to weaknesses or problems; however, the compliance officer should be involved in the ongoing auditing activities. This does not mean being the only one doing the auditing work. That can be done by any party competent to conduct independent review of the program managers' monitoring programs. This may include the compliance officer, internal or external auditors, consultants, or any combination thereof.

The problem for most organizations is having sufficient resources to carry out what is needed in meeting the ongoing auditing burden. Even if you have your own internal audit staff, the likelihood is they will have other priorities in addition to compliance-related reviews. However, there are always experts out there to help with either conducting risk analyses in support of ongoing monitoring or conducting ongoing auditing of selected high risk areas. If it is decided that outside assistance is needed, the questions then are:

- How much outside assistance is affordable?
- What are the high-risk areas that have the highest priority?
- How soon do we have to have results to mitigate risks?
- Does any of the work warrant being performed under direction of legal counsel?
- Are there mechanisms in place to verify that corrective action was effective and sustainable?

During my tenure at New York-Presbyterian Hospital, I reported to the Audit and Compliance Committee of the Board of Trustees. The chair of that committee was one of the most astute people I ever met, and in discharging his duties as chair, he frequently would ask what I consider the single best question I ever heard: "How do you know?"

When a senior manager of the hospital would answer a question about the status of his or her operation or whether a problem or weakness (e.g., discovered in an audit) was corrected, the chair would ask, "How do you know?" The implication was that the manager needed to have developed relevant metrics that told him or her specifically whether the operation conformed to established standards or complied with rules and regulations.

From experience, I also learned that a primary function of audit was not to discover problems or weaknesses but rather to verify the extent of problems or weaknesses indicated or suspected by management. This was the most efficient way to direct audit activities to the highest priorities. Ideally, auditors should be able to audit against the metrics that management used to indicate that the problem existed in the first place. The implications of both "How do you know" and the perspective on audit's function were clear — the most effective way to identify problems and address weaknesses was through management developing and maintaining an effective system of internal controls, which included monitoring and reporting mechanisms and applicable metrics.

If you have no indicators and must wait for audit (internal or external) to discover your problems, then it will be too late. We all know that it is easier and more efficient to correct problems at the source and close to real time than to have to go back, diagnose what happened, and then initiate corrective action. Of course, it's a lot cheaper, especially when you compute the cost of dealing with a governmental audit or investigation and the potential ramifications (consultant costs, legal costs, repayments, penalties, corporate integrity agreements, and the in-house cost of managing the whole process).

So, what does this mean in terms of compliance programs and the auditing and monitoring requirements therein? We all have to figure out how to tackle a very large universe. There is an African proverb that asks, "How do you eat an elephant?" The answer is, as everyone knows, "one bite at a time." The problem is that in today's regulatory environment the "one bite at a time" answer does not suffice unless it is an elephant-sized bite.

In meeting the best practice standard, the following should be considered:

- Management needs to get in the game. Program managers need to make sure that controls exist for all regulatory issues within their areas of responsibilities. The first step has to be to sit down with the knowledgeable people, those most familiar with operations, and discuss all the legal and regulatory issues within their area of responsibility to identify what policies, procedures, processes, and other controls are in place to safeguard against existing risks. This will result in an inventory of policies and other internal controls for each risk area.
- For those areas with identified control deficiencies, they need to be remedied immediately with follow-up testing to ensure they are functioning as designed. Thereafter, they should be subject to ongoing auditing to determine the effectiveness of the remedial actions to reduce error and risk. The urgency of filling control gaps will be a function of the degree of the control deficiency and the level of risk that exists in the regulatory area in question. If the lack of controls is pervasive and/or there are indicators of possible violations of regulations or law, it may necessitate a special audit under direction of legal counsel. The results of those audits may have to result in disclosure and refunds of overpayments. It is far better identifying a problem, fixing it, and reporting as necessary to the regulators than having the regulators discover it and put you on the defensive.
- For risk areas that appear to have sound controls, it is advisable to independently verify the existence and validate the effectiveness of such controls through ongoing auditing. If the control structure is as operational management professes, there should be little if any need for additional action.
- This process of management monitoring and independent auditing should not be a one-time exercise. It should be ongoing. Management must continuously monitor and assess the existence and effectiveness of its internal controls and address any gaps found through the auditing process.
- As called for by the OIG, regular reporting on the ongoing monitoring and auditing program to senior management is very important. Use of the Executive Compliance Committee is important. Also, similar reporting to the board-level committee providing auditing and compliance oversight is also something that should be done in order for them to meet their oversight obligations.
- It is important that an annual ongoing auditing work plan be developed and approved to ensure continual attention to high-risk areas. The fact that such a plan is in effect will stimulate operational managers to be diligent in the ongoing monitoring responsibilities.

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