2019 Healthcare Compliance Benchmark Report

STRATEGIC MANAGEMENT

SAI GLOBAL

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Executive Summary

This report provides results from SAI Global's tenth annual Healthcare Compliance Benchmark Survey. It is a collaborative effort with Strategic Management Services, LLC, a nationally recognized expert in compliance consulting services for the healthcare industry, with Richard Kusserow, former U.S. Department of Health and Human Services (DHHS) Inspector General leading the analysis of the results. A key survey objective was to gain a better understanding of the status and progress of compliance program development in the healthcare industry. Respondents were asked a variety of questions relating to the current state of healthcare compliance, including demographic data, resource levels, reporting relationships, compliance program operations, challenges, and priorities for 2019.

Findings, along with an analysis of the significance of results, are based upon input from 419 respondents. Almost half of the respondents were from hospitals. However, there was a growing number of respondents from other provider areas, likely a result of mandates going into effect for skilled nursing facilities and increased enforcement of physician groups, clinics, Ambulatory Surgery Centers, home health, and hospices.

Over the past ten years of the survey, there is clear evidence that the role of the Compliance Officer has continued to evolve and encompass more responsibilities, particularly with Health Insurance Portability and Accountability Act (HIPAA) privacy/security, internal audit, and risk management. Evidence also suggests that many compliance programs may not be fully developed or may not be able to evidence effectiveness.

(Note that each data point was based on the number of responses to a particular question. Since each survey question was made optional to answer, there was a different number of responses to individual questions.)

PART 1

Healthcare Compliance Trends

Budget Expectations

Results from 2019 follow the same pattern as previous surveys, where half of the respondents were expecting their budget to remain essentially the same; however, there was a slight uptick in those expecting budget increases from 25% to 28%, and about 10% expecting budget reductions or not sure what will happen. This suggests that resources available for compliance programs continue to be tight, although additional responsibilities are being added to the function.

Percentage of Respondents

■ Decrease significantly ■ Decrease slightly ■ Stay about the same ■ Increase slightly ■ Increase significantly
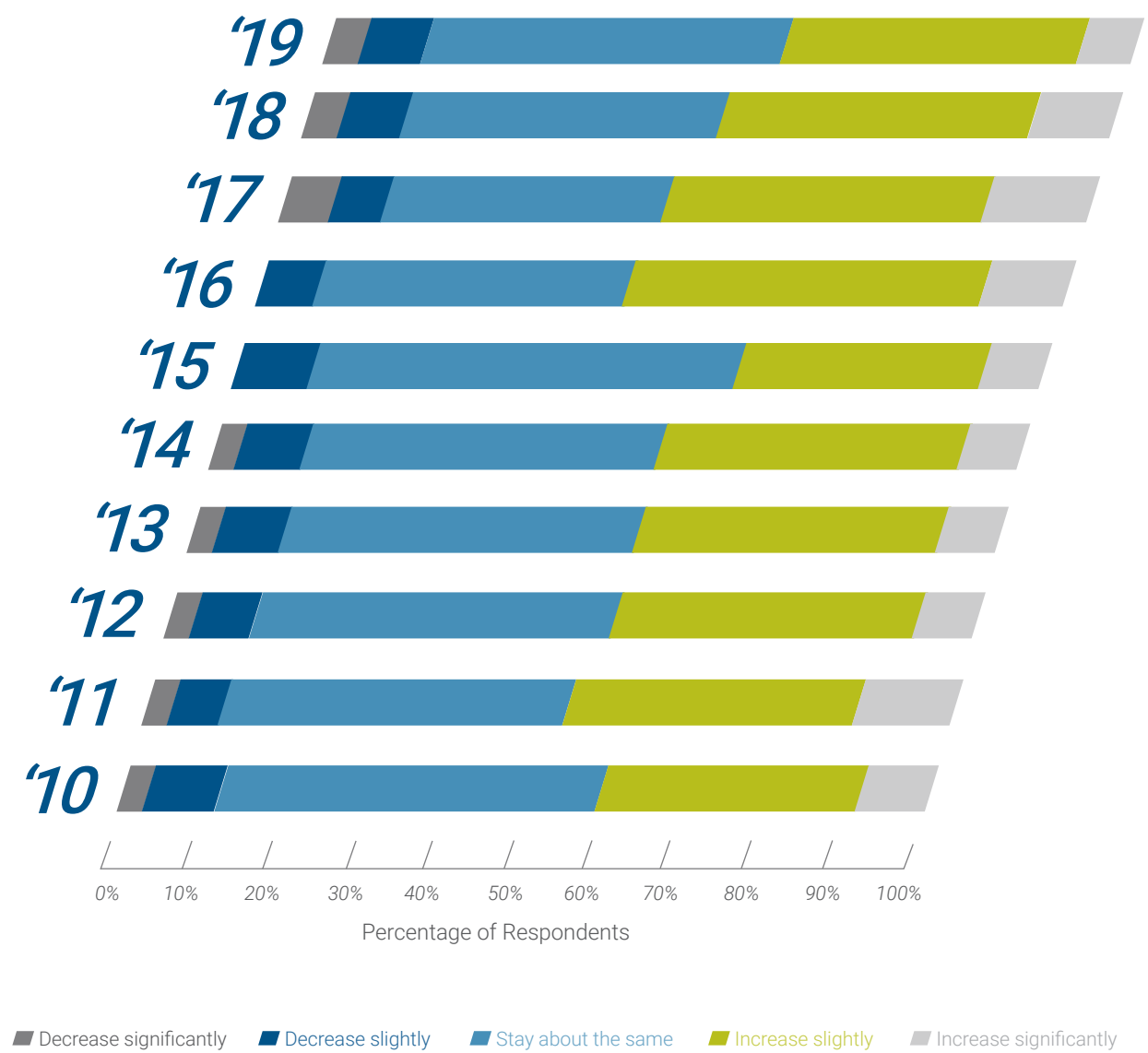
Compliance Office
Operations Priorities

Since the release of the first survey, the top priorities of the compliance office remain consistent, with compliance program effectiveness as the first priority, followed closely by compliance training, revising and updating compliance-related policies, and investigative management.

Compliance
High-Risk Priorities

In 2018, HIPAA security/cybersecurity and privacy moved into first place among respondents as the highest priority for the compliance program, and it continues to hold that position in 2019, as a result of continued cyber-attacks, data breaches, and OCR enforcement actions. The most significant change has been the increase in the priority of physician arrangements over the past five years. This is likely due to a renewed focus on the financial benefits for both hospitals and physicians. Claims processing has continued to hold third place over the past several years.

Methods for Demonstrating
Program Effectiveness

As in prior surveys, most respondents reported relying upon internal process measurements, such as using checklists and tools to evidence program effectiveness. One-third of respondents reported using internally generated and administered surveys for evaluating program effectiveness. The use of independent experts to evaluate the compliance program rose from 25% to 29%, with one in five reporting that they did not assess their program. Although this data suggests increased attention to independent reviews, the percentage is still relatively low.

Additional Responsibilities
for Compliance Officers

One of the most dramatic trends in the past ten years has been the increase of new duties and responsibilities for the Compliance Officer as a cost saving measure for the organization. The 2019 survey indicates that 77% of Compliance Officers now have responsibility for HIPAA privacy, half for internal audit, one-third for HIPAA security, about 40% for risk management, 17% for legal counsel, and 30% for citing and varied activities (e.g., revenue integrity, credentialing and clinical oversight).

DOES YOUR COMPLIANCE OFFICER HAVE RESPONSIBILITY FOR OTHER AREAS?

17% LEGAL

30% OTHER

37.5% HIPAA PRIVACY

30% HIPAA SECURITY

30% INTERNAL AUDIT

30% RISK MANAGEMENT
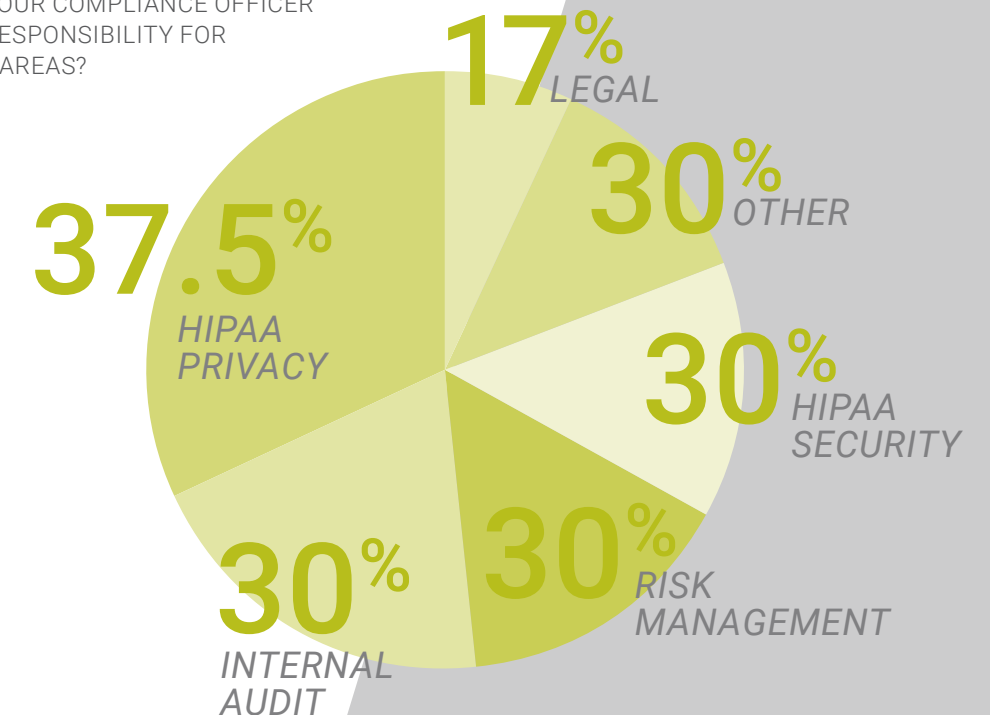
Overview and Objectives

The 2019 Healthcare Compliance Benchmark Survey was designed to assist Compliance Officers in understanding how their compliance program relates to the industry at large. The messages from the Office of Inspector General (OIG) and the Department of Justice (DOJ) have noted that having an effective compliance program can be a mitigating factor when assessing culpability, potentially resulting in reduced penalties and/or more favorable settlement terms.

This year, 419 respondents participated in the survey from across the spectrum of provider and managed care organizations. The participation rate from organizations outside of the hospital sector suggests a growing interest in compliance program development of the seven standard elements in other sectors of the industry. There is also evidence that suggests that some additional work is needed for their programs to be evidenced as effective.

Seven Standard Elements of an Effective Compliance Program:

1. Written compliance guidance (code of conduct, compliance-related policies)

2. Designation of compliance officer and compliance oversight committees

3. Effective compliance education and training

4. Effective lines of communication with employees (e.g., a hotline)

5. Guidance regarding disciplinary action; new employee screening

6. Ongoing monitoring and auditing of programs with high compliance risks

7. Prompt investigation, resolution, and reporting of potential violations

People

PEOPLE

PART 3

Demographics of Participants

Half of the respondents were from hospitals; however, in 2019, there was a growing number of respondents from other provider areas, likely stimulated by mandates going into effect for skilled nursing facilities (7%) , as well as increased enforcement with physician groups, clinics, and ASCs (11%) and home health and hospices (5%). The balance, categorized as "Other," included a variety of ancillary services, but also terms that would place them under hospitals, skilled nursing, clinics, or home health.

Staff Level of Compliance Offices

Data about the adequacy of resources for Compliance Officers in meeting this challenge was gathered. The responses to this question suggest that many compliance offices are operating with less than fully adequate resources to meet their obligations. The roles and responsibilities of Compliance Officers are evolving beyond the original compliance guidance by the OIG and, as noted elsewhere in the survey, most compliance offices have had other responsibilities added, particularly in HIPAA privacy and internal audit.

Compliance Experience Level

Results from the survey evidence the growing number of Compliance Officers with extensive experience. Half of respondents reported 10 or more years of experience, whereas those just starting out in this area, with less than one year's experience, numbered less than 5%. Nineteen percent reported having six to nine years' experience, and 28% had one to five years' experience.

30% Operate with one part- or full-time person

35% Have over 6 staff

35% Have between 2–5 staff

10 years Half of respondents have 10 years or more compliance experience

Compliance Staff Job Satisfaction

Given the ever-increasing expectations and pressure on the compliance operation, a new question about job satisfaction was added to the survey this year. About four out of ten respondents reported satisfaction with their current work situation and were not considering opportunities elsewhere. Slightly more reported general satisfaction, but would consider opportunities elsewhere. About 10% were okay with the current situation, but are looking for another opportunity. Only 2% reported their current situation as not good and were actively seeking and applying for other jobs. Only about 1% were working to get out of compliance, while 5% responded that, regardless of the current work situation, they plan to stay put until retirement.

An interesting finding from this question is that more than half would consider opportunities or are actively seeking another position or opportunity. This may help explain the number of organizations that are actively seeking compliance officers to fill gaps with the departure of their incumbent.

Compliance Reporting Structure

The OIG compliance guidance and U.S. Sentencing Commission guidelines call for the Compliance Officer to report directly to the CEO, and over half of the survey respondents stated that their organization follows that guidance. However, many organizations continue to designate others to oversee the compliance program: in particular, 14% of respondents indicated that their Compliance Officer reported to legal counsel, which is contrary to the position of both the OIG and DOJ. They view attorneys as advocates for the organization, not independent gatherers of fact and evidence who would voluntarily disclose violations of law and regulation to appropriate authorities.

Another 7% reported day-to-day management by the Board, which also is not a good answer; compliance is a management, not Board, oversight function. Reporting to the COO was identified by 6%, the CFO by 3%, and the balance of the respondents provided a wide variety of answers including the CIO, CMO, split reporting between various entities, and more.

7% BOARD

14% LEGAL COUNSEL

56% CEO
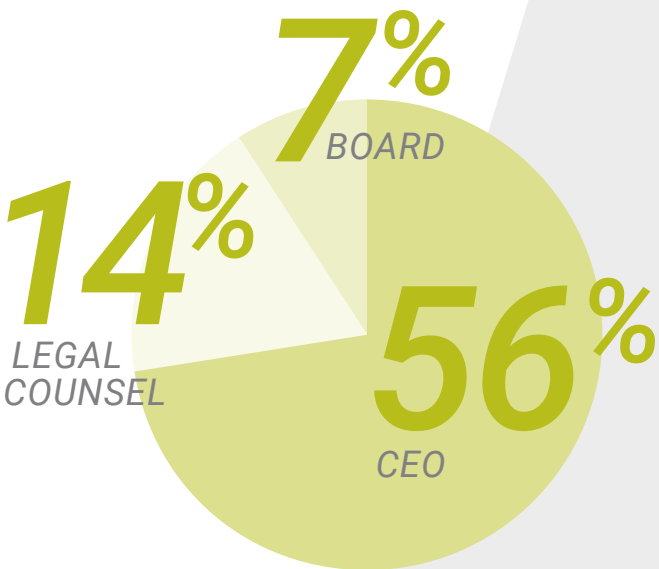
The Board

PART 4

Top Board Level Compliance Oversight Activities

Respondents were asked about how the Compliance Officer and Board interact and the most important items of Board oversight interest. Less than half of respondents have Board review of compliance program evaluations of effectiveness, which is their primary oversight responsibility, and only 18% report that oversight includes active involvement in the evaluation of the Compliance Officer's performance.

About 25% indicated that their Board reviews and approves the compliance budget, a critical factor in effective oversight of the program and in determining overall value of the program. Only about

one-third reported the Compliance Officer meeting in executive session, without management's presence, to ask question about any issues related to individual executives or regarding adequacy of the support for the program.

No Board audit committee would meet with auditors without having an executive session to ask such questions. This should be considered a weakness in Board support for most compliance programs involved in the survey.

Compliance Program Executive and Board Support

The OIG and DOJ made it clear that compliance begins at the top, with the Board and executive leadership. If found otherwise during enforcement actions, they face potential adverse actions by the government. About 84% of respondents noted executives and the Board as being supportive, while only about 16% reported weak or no support.

1. *Meeting with Compliance Officers to review program*

2. *Reviewing results of significant compliance investigations*

3. *Reviewing ongoing audit findings of high-risks areas*

Adequacy of Compliance Officer Authority

Respondents were asked whether their Compliance Officer has enough authority to meet the obligations of the office, and three-quarters responded in the affirmative, with only one-quarter indicating the negative.

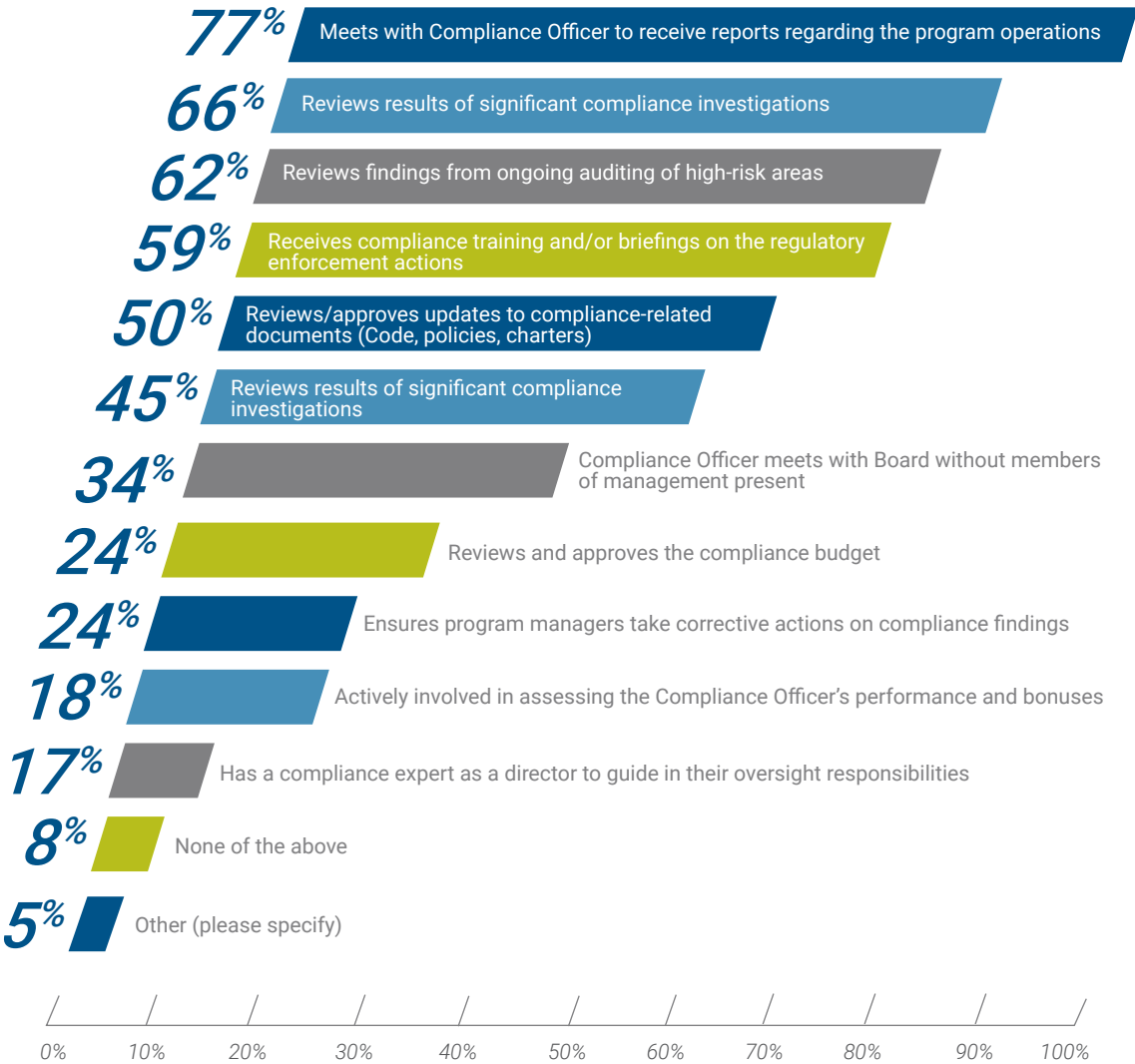## Frequency with Which the Board Meets with the Compliance Officer

Responses to this question were very positive, with about 59% of respondents noting that their Compliance Officer meets with the Board at least quarterly. However, 11% noted that it is only annually, 15% monthly, and 14% said only as needed or not at all. Meeting quarterly aligns with following best practice. Meeting annually is not enough and meeting monthly is overkill, placing the Board in a role best filled by management.

2019 Board Presentation Topics With Highest Priority

Oversight of the compliance program was selected by over half of the respondents as the highest priority for presentation topics for the Board; this far outranked the other choices and is consistent with OIG compliance guidance. Tied in second place were updating on the regulatory and legal environment, and updating on results from ongoing auditing of high-risk areas. In fourth place was presentation of results from significant compliance investigations, followed in descending order by independent evaluation of the compliance program, conflict of interest issues, results of ongoing monitoring by program managers, and issues from the hotline. No one selected reporting results from compliance training.

Compliance Oversight Activities Conducted by the Board or Board Designated Committees

%	Activity
77%	Meets with Compliance Officer to receive reports regarding the program operations
66%	Reviews results of significant compliance investigations
62%	Reviews findings from ongoing auditing of high-risk areas
59%	Receives compliance training and/or briefings on the regulatory enforcement actions
50%	Reviews/approves updates to compliance-related documents (Code, policies, charters)
45%	Reviews results of significant compliance investigations
34%	Compliance Officer meets with Board without members of management present
24%	Reviews and approves the compliance budget
24%	Ensures program managers take corrective actions on compliance findings
18%	Actively involved in assessing the Compliance Officer's performance and bonuses
17%	Has a compliance expert as a director to guide in their oversight responsibilities
8%	None of the above
5%	Other (please specify)

0%   10%   20%   30%   40%   50%   60%   70%   80%   90%   100%

Methods & Procedures

METHODS & PROCEDURES

Review and Updating Code Of Conduct Documents

The OIG has been clear that a truly effective compliance program keeps written compliance guidance up to date. This position is reinforced in CIAs that mandate that the code of conduct and compliance program-related policies are kept up to date by annual reviews. Most respondents currently meet that annual review benchmark. However, those who do not are opening themselves up to potential liabilities.

REVIEWING FREQUENCY

5% NO PROCESS FOR REVIEW

20% AS NEEDED

59% ANNUALLY
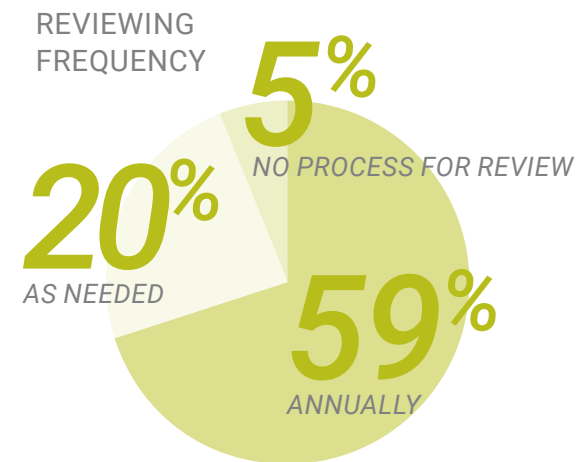
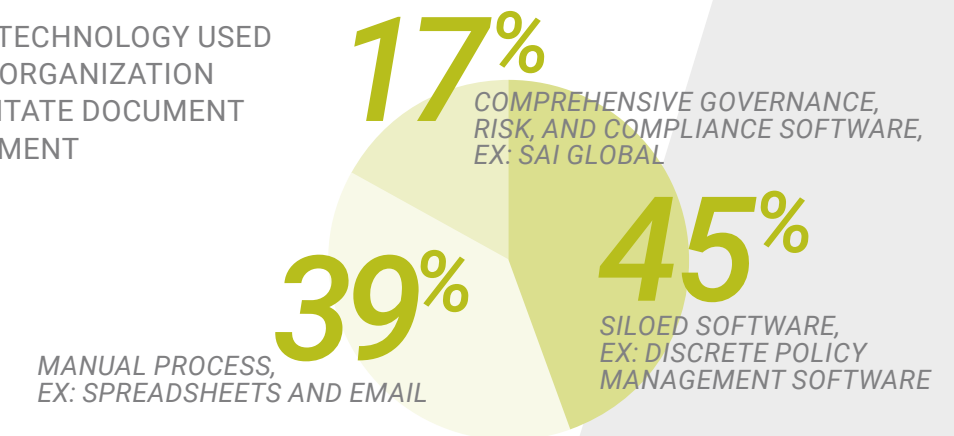## Methods by Which Compliance Guidance is Disseminated

The OIG compliance guidance calls for the development and distribution of and easy access to both written standards of conduct and compliance-related policies and procedures, as well as training on these topics. Eighty-three percent cited the organization's Intranet as their number one method, while 12% indicated postings on the organization's external website.

Six out of ten cited compliance training as a method of dissemination. However, this result should be higher, in that many added it under "other," describing it with different terminology, such as new employee training/orientation or learning management system. About one-quarter also mentioned handing out hard copies of the documents and disseminating them through the document management system.

Compliance Document Management

Appropriately managing and controlling the organization's compliance-related policies and procedures continues to be a challenge for Compliance Officers. Organizations have continued to turn to software to better manage the process. The percentage of respondents who indicated they were manually managing their documents declined from 45% in 2018 to 39% in 2019.

TYPE OF TECHNOLOGY USED BY YOUR ORGANIZATION TO FACILITATE DOCUMENT MANAGEMENT

17% COMPREHENSIVE GOVERNANCE, RISK, AND COMPLIANCE SOFTWARE, EX: SAI GLOBAL

45% SILOED SOFTWARE, EX: DISCRETE POLICY MANAGEMENT SOFTWARE

39% MANUAL PROCESS, EX: SPREADSHEETS AND EMAIL

Compliance Work Plan Development

Respondents were asked about sources used in the development of the compliance work plans. The OIG Work Plan was cited by 81% of respondents; immediately followed by results of audits and investigations. About two-thirds reported webinars and conferences as major resources in work planning. About the same number cited monitoring government documents and websites. After these choices, there was a significant drop in the remaining areas. Blogs and online reports were noted by one-third of respondents, with about one-quarter noting results of compliance risk assessments by external

Top Six Cited Sources You Use to Create your Compliance Work Plan:

1. *OIG work plan*

2. *Audit findings and recommendations*

3. *Compliance investigations*

4. *Government documents/websites*

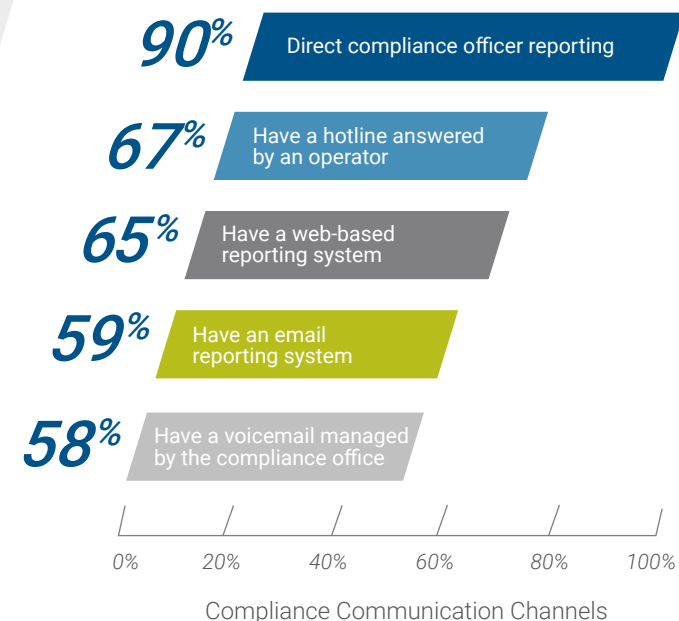5. *Webinars*

6. *Conferences*

Compliance Education and Training

Development and implementation of regular education and training programs is one of the seven critical elements of a compliance program. The OIG calls for the development and implementation of regular, effective education and training programs for all affected employees, and specifies that it should take place at new employee orientation and annually thereafter. They have reinforced this message by mandating it in their Corporate Integrity Agreements. The great majority (72%) of respondents are engaged in this best practice.

Methods for Delivering Compliance Training

Last year, two-thirds of respondents reported using learning management systems, whereas this year that number rose to 79%. About 60% reported using live training, which is generally recognized as the most effective training, but at the same time the most time-consuming and expensive method. However, one of the benefits of learning management tools is that they often provide measurement tools to determine training effectiveness, such as employing tests/quizzes. The other forms of training remained at 12% and included email, hard copy handouts, newsletters, webinars, and online training courses.

The rise in both live training and learning management systems is a result of more organizations employing both techniques in delivering training.

Compliance Communication Channels

90% Direct compliance officer reporting

67% Have a hotline answered by an operator

65% Have a web-based reporting system

59% Have an email reporting system

58% Have a voicemail managed by the compliance office

0%   20%   40%   60%   80%   100%

Compliance Communication Channels

Compliance Communication Channels

Regulatory bodies providing compliance guidance call for multiple compliance communication channels and survey results clearly evidence that most compliance programs are meeting this standard through a variety of methods, as noted in the chart. Employees differ in their preferred method of reporting compliance concerns, but having alternative channels is something warranting high priority. Most organizations use a vendor to provide hotline services, but strong consideration should be given to using only those services that offer both a live operator hotline and web-based reporting.

Vendor Tools and Services Employed by Compliance Offices

The trend of increased reliance upon vendor tools that allow the compliance office to focus more on core responsibilities has been noted in the past 10 years of the Healthcare Compliance Benchmark Survey. Results have been evidencing a strong movement toward increased reliance on vendors for services and tools. Findings indicate that today most organizations continue to look for ways to use vendors to assume some of the burdens that support, but are not part of, the core compliance office operations.

For 2019, most respondents reported using tools and services provided by vendors for routine services. By far, the tools and services most relied upon are related to hotline answering services, with over 72% reporting the use of such a vendor. Most compliance officers also use sanction screening and eLearning services. Respondents cited five services used by one-quarter to one-third of the compliance offices: (a) policy and code development, (b) automated compliance incident management software, (c) claims reviews, (d) sanction screening result resolution, and (e) specialized compliance/HIPAA investigations.

One out of five organizations reported using tools for compliance document management, measuring compliance program effectiveness, audit management software, and critical incident management. The six services and tools used least were for arrangements contracts, employee compliance surveys, program evaluation tools, on-call expert advisory services, scoring tools for risk assessments, and specialized training support for investigations.

Program
Operations

PROGRAM OPERATIONS

PART 5

Compliance Program Change in Performance Since Last Year

Results suggest that most Compliance Officers believe their program is improving, despite growing responsibilities and management expectations. About one-quarter responded that they saw significant improvement in the compliance program, with slightly over half indicating some progress, and 14% staying about the same. Only 5% reported that the program slipped in the past year.

Compliance Program Challenges

The top three challenges for the compliance office in 2019 were (1) engagement of leadership support; (2) managing ongoing auditing of high-risk compliance areas; and (3) getting program managers to focus on compliance risks in their area.

Following these, with significantly lower scores, were (4) evidencing compliance program effectiveness; (5) hiring, training, and retaining qualified staff; and (6) developing/delivering compliance training programs. The remaining areas all had similarly low scores: conducting internal investigations; developing/delivering compliance training programs; document management; coordinating with other functions (legal counsel, human resource management, program managers, etc.); and code and compliance policy management.

The results clearly indicate that Compliance Officers are focused on addressing compliance risk areas and gaining management support in this effort. The balance of the challenges generally fell into the broad category of process problems. The results show that Compliance Officers focused more on mission-driven problems than internal process-related matters.

1. Engagement of leadership support

2. Ongoing auditing of compliance risk areas

3. Getting program managers to focus on their risk areas

Top Challenges Managing the Compliance Program for 2019

The number one compliance program challenge reported by respondents for 2019 is ensuring organizational compliance with laws and regulations.

Very closely behind was getting program managers to improve ongoing monitoring of their risk areas. Following that was getting enough resources to do the job and gaining better support from executive leadership as their lead challenge. After that there was a drop in the ranking to finding and retaining qualified staff. The two challenges at the bottom were obtaining more coordination/cooperation with Human Resources and gaining better support from the Board, while improving the working relationship with legal counsel had a negligible score.

Compliance High-Risk Priorities

Respondents were asked about their priorities in dealing with compliance-related risk areas. Similar to last year, HIPAA Security and Privacy together were ranked as the top priority. HIPAA Security alone was top ranked by close to 50% of respondents, and another 39% named HIPAA Privacy as their top priority. In second place respondents had physicians arrangements, followed in third place by claims processing error.

Increased Responsibilities for the Compliance Office

As organizations tighten their budgetary belts, many organizations are having the compliance office assume additional responsibilities, often without adding resources; this practice adds stress to the function. Survey findings are that 77% of compliance offices are now responsible for HIPAA Privacy, with many others having Security as well. Nearly half report Internal Audit, four out of ten Risk Management, a third HIPAA Security, and 17% Legal. Other and varied activities reported include revenue integrity, quality, credentialing, and clinical oversight.

Areas of Greatest Confidence in the Compliance Operations

This question was designed to gain insights into the level of confidence that compliance-related issue areas are being managed. The area ranked as the highest confidence was the accuracy of sanction screening, followed closely by executive leadership and the Board, and the hotline program. Sanction screening and hotlines are areas where compliance primarily relies upon vendors. Also ranking high was commitment to compliance by the Board. Confidence in arrangements with physicians came next.

Midway down the confidence list was quality of compliance education and training programs. Lower confidence was placed in ongoing auditing and evaluation of high-risk areas and the claims processing system. Lowest confidence was with ongoing monitoring of high-risk areas by program managers and oversight of ancillary services compliance. These findings are consistent with the results from other questions.

The relatively high confidence in the Board mirrors results from questions about frequency of contact and subject matter related to them. Another area of relatively high confidence deals with arrangements with physicians, the number one enforcement priority for the DOJ and OIG, which was identified as one of the lowest priorities for the compliance office for 2018. Confidence in the quality of compliance education and training was also relatively high and the use of vendor eLearning tools may account for it.

The areas where confidence was relatively lower included evaluation and ongoing auditing of compliance-related risk areas, which was identified as two of the top four compliance challenges for the year. Claims processing system came in very low, as well. At the bottom of the confidence level was program manager ongoing monitoring of their compliance risk areas. This topic was similarly low on the question of planned topics for presentation to the Board, and was ranked high as a major challenge for 2018.

Areas of Greatest Confidence

1. Sanction screening accuracy

2. Executive leadership/Board commitment

3. Hotline program effectiveness

4. Physician arrangements

Independent Evaluation of Compliance Program

Most organizations reported having an independent evaluation of their program at some time. About one-quarter of organizations had an independent evaluation of their compliance program within the last year, with another 16% indicating it had been done within the last three years. The organizations responding with these answers are engaged in best practices. Another 12% reported it had been done over three years ago, and nearly half have never had an independent review, or are not sure if it has ever been done.

Independent compliance program effectiveness evaluations are growing in importance and have been reinforced repeatedly by the OIG and other regulatory bodies with the message that having a program that lacks effectiveness would be detrimental for those found in violation of laws or regulations.

Compliance officers, like all program managers, are responsible for ongoing monitoring of their program, but cannot audit its effectiveness. To be at all credible, auditing must be done by parties independent of the program. Using checklists can be useful for ongoing monitoring, but internally-generated compliance surveys lack credibility, and outside parties (Board level, government oversight agencies) don't place much value on them. Most employees don't trust them, especially in ensuring anonymity in responses. Furthermore, it is difficult to know what the scores truly indicate.

26%
WITHIN THE YEAR

46%
NEVER DONE / NOT SURE

16%
WITHIN THREE YEARS

12%
OVER THREE YEARS
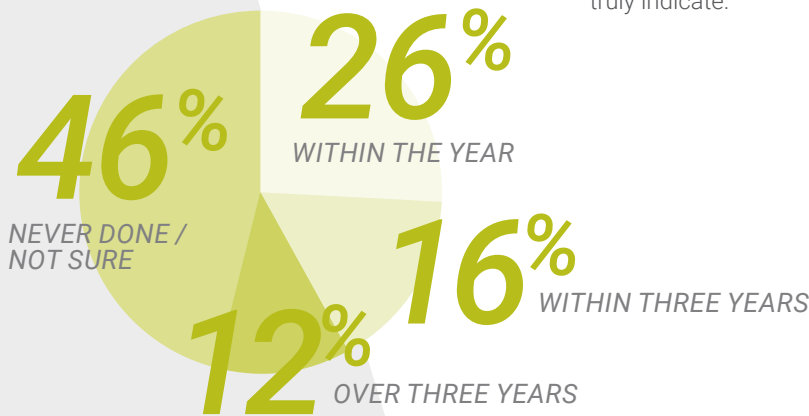
Evidencing Compliance Program Effectiveness

This is probably the most important question, as evidencing program effectiveness is critical. Half of respondents reported that their compliance program uses a self-assessment tool or checklist to evaluate their effectiveness. One-third use internal compliance surveys; 29% use an independent expert to conduct their reviews and assessments; and 19% don't currently assess the effectiveness of their compliance program.

The Compliance Officer, like any program manager, is responsible for ongoing monitoring of their

program and for verifying that it is operating as designed. The program should also be subject to ongoing auditing by parties independent of the compliance office.

The results of this question indicate that most organizations don't have independent evaluations of the compliance program, relying instead upon self-assessment tools and checklists, internally-generated surveys, and after-training testing. At best, these are used as a "gap analysis" for elements that may be missing in the program. These methods provide little evidence of how effectively these elements function in the day-to-day operation of the organization.

Compliance-Focused Surveys to Evidence Program Effectiveness

About 64% have not used surveys to measure compliance program effectiveness in the past year. Evidence from elsewhere in the survey indicated that, when compliance surveys were used, they were internally developed and administered, which often brings their objectivity and promise of anonymous reporting into question. Surveying employees is one of the methods advocated by the OIG in their Compliance Program Guidance.

Results from a professionally-administered survey can provide a powerful report to the compliance oversight committees, as well as to any outside authority questioning the program. Surveys can also identify relative strengths in the compliance programs, as well as those areas requiring special attention. However, evidence from other questions in the survey indicated that organizations clearly favor developing and administering surveys internally. This is not a best practice.

Top Priorities for Improving Your Compliance Program In 2019

Respondents were asked about compliance office priorities for 2019 and respondents identified evidencing compliance program effectiveness as their top priority for improving the compliance program. The next five responses, which were bunched closely together, were compliance auditing, gaining increased support for the program, providing quality compliance training, revising/ updating compliance-related policies, and investigative management. The bottom four areas garnered significant points, so should be considered in spite of being at the bottom of the rankings. They were related to compliance investigations, improved hotline efficiency, Board training, upgrading the sanction screening process, and program manager ongoing monitoring of their risk areas.

Initiatives Under Consideration to Improve the Compliance Program

Respondents were asked which initiatives were being considered to address compliance program challenges in 2019. Nearly six out of ten identified "Working with program managers to improve ongoing monitoring of their risk area" as an initiative being considered for 2019. Half noted "Building a more robust ongoing auditing program" and more than four in ten cited "HIPAA Privacy and Security Assessment" as initiatives with increasing priority. These three areas reflect the high priority on identifying and mitigating compliance risk areas. Following that was "Enterprise-Wide Regulatory Risk Assessment" (34%), with "HIPAA Security/Cyber-Security Compliance Evaluation" (31%) another major issue to be engaged.

One out of five respondents cited "Independent Compliance Program Effectiveness Evaluation." One out of ten indicated "Independent Compliance Program Gap Analysis" and "Independent Compliance Review of Arrangements with Physicians." Six percent cited "Independently Developed/Administered Compliance Knowledge Survey."

It is noteworthy that one-quarter of those participating in the survey declined to answer this question, either because they have not yet developed a plan, had it approved, or don't have annual work plans. The responses can be categorized into three bundles.

The major focus indicated by respondents was on risk identification and mitigation. Three of the four top selected initiatives dealt with this area. The second bundle involved HIPAA, with the third and fifth rankings. The four items at the bottom of the choices selected related to independent assessment of effectiveness of the compliance program (effectiveness evaluation and gap analysis, arrangements with physicians, and compliance knowledge surveys), which represents the third bundle.

Top Four Priorities

1. Evidencing compliance program effectiveness

2. Compliance auditing

3. Gaining increased support for the program

4. Providing quality compliance training

Resource Levels Anticipated in 2019

To accomplish the mission of building and operating an effective compliance program, there must be adequate budgetary resources. Half of respondents indicated they are expecting their budget to remain largely the same, while 29% expected an increase, a slight uptick from 25% in 2018. One out of ten expected a budgetary reduction, and the balance was unsure. Given the combination of increasing responsibilities noted elsewhere in the survey, and heightened enforcement by government agencies, it is likely that most compliance offices are being stretched with available resources. The survey also found that many are turning to external vendors to provide services and tools, to stretch limited staff resources and lower operating costs.

Sanction Screening

Respondents were asked about screening those with whom they engage against sanction databases. Three-quarters of respondents noted that their organization screens individuals/entities prior to engagement and then monthly thereafter, which is the best practice standard. Out of the remaining respondents, 7% screen only pre-employment/engagement and not thereafter; 6% reported screening monthly thereafter; and 6% screening prior to engagement and quarterly thereafter. The balance of responses was scattered among screening quarterly after engagement, annually after engagement, and not conducting screening.

The OIG LEIE was reported as being checked by 96% of respondents, followed by three-quarters who reported screening against the GSA Debarment Listing and State Medicaid sanction databases. About one-third reported screening against the Office of Foreign Asset Control (OFAC) list. One-third reported screening against the Drug Enforcement Agency (DEA) sanction list for those convicted of Category I and II controlled (narcotic) drugs violations.

Slightly more than one-quarter screen against the Food and Drug Administration (FDA) sanction database that contains actions taken against clinical researchers who have violated their authority. The remaining 7% reported extending sanction screening to other databases, such as the CMS preclusion listing, Social Security death listing, and National Practitioner Data Bank, among others. Sanction screening against the OIG LEIE is not optional; CMS also calls for screening against the GSA Excluded Party List System (EPLS). CMS has been calling for Medicaid directors to establish sanction databases for their respective programs and to mandate monthly screening by providers in their program. However, the decision by health care organizations to screen the other databases noted in the question is discretionary, not mandated.

Sanction Screening Is a Shared Responsibility

Another question found that the responsibility for sanction-screening was shared. Nearly three-quarters identified sharing sanction screening responsibility with HR, followed by the compliance office at two-thirds. About 39% identified credentialing as having responsibility, while 23% cited procurement being responsible, and the remainder of about one in ten indicated other parties, such as finance, security, legal, business office, etc.

This question was followed by a query about how the process was managed; most respondents reported having a vendor tool for screening, with only 29% of respondents noting that internal staff use a vendor tool to make checks. The entire sanction screening process, including resolution of "potential matches or hits," is being outsourced by 39%. Only 29% manually perform the entire process internally. The reliance upon vendor tools is a major movement with Compliance Officers to preserve limited staff time and save money. This movement is most evident when considering sanction screening practices. Vendors have established databases and search engine capabilities with updated information with the cost amortized over many clients, making it a far less expensive effort.

HIPAA Compliance Readiness

Concerns about data and security breaches once again ranked at the top of priorities in 2019.

This year, 18% of respondents indicated high confidence in their preparation for an Office of Civil Rights (OCR) audit, declining slightly from the 20% reported last year and the 30% in 2017. However, 65% indicated moderate confidence in readiness this year, up from 60% last year and 50% in 2017. The "not very confident" and "does not apply" responses were about the same as in prior surveys.

Clearly, this is an area that has drawn the attention of Compliance Officers after so many cases of cyberattacks and data breaches have flooded the healthcare sector with greatly increased OCR audit and enforcement activity. As they have more closely looked at the subject, it is also clear that they have taken steps to raise their confidence in being able to successfully defend an OCR audit.
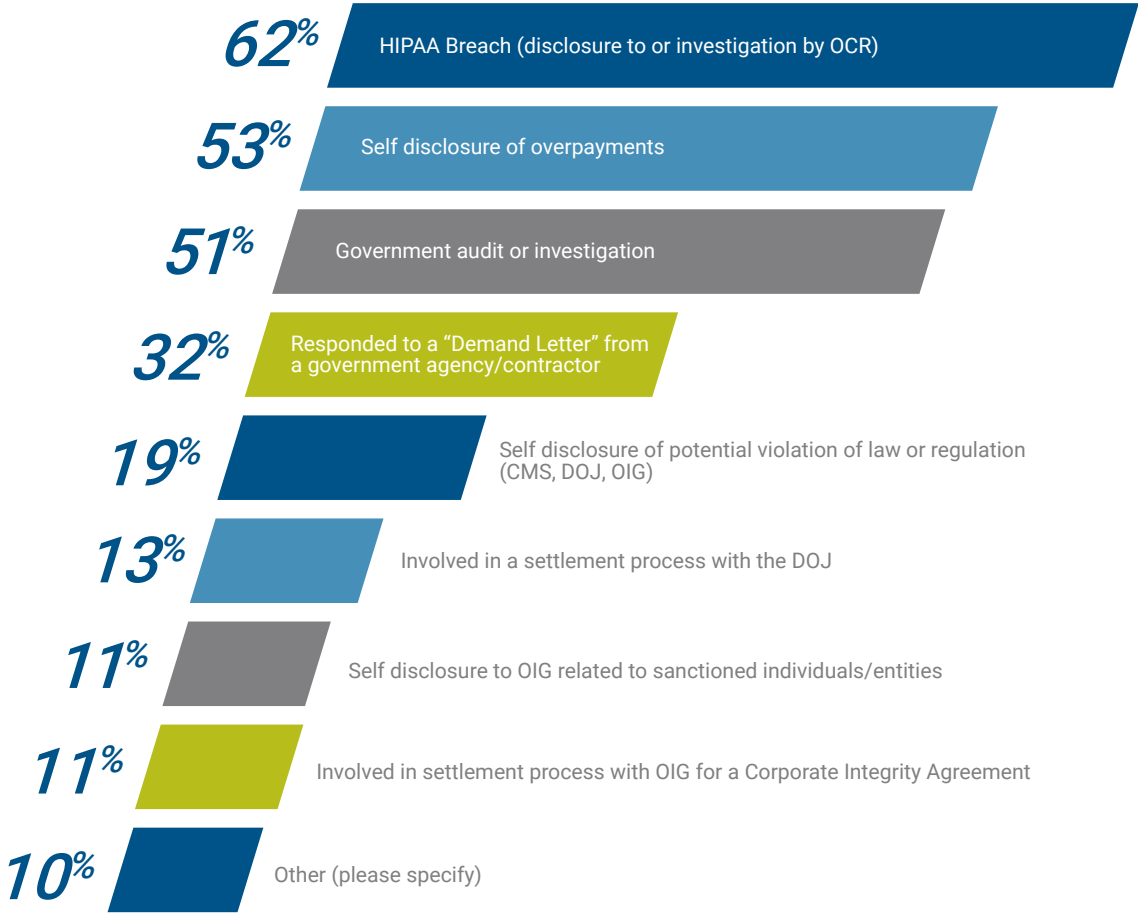
Regulatory Encounters

It is widely recognized that regulatory and legal enforcement activities have been increasing over the last few years. As such, a new question was added to the survey, designed to find out how common substantive encounters with government authorities were and the nature of those encounters.

Nearly two-thirds of the respondents reported having made disclosure to OCR of breaches of privacy under HIPAA. Over half reported making self-disclosures of overpayments received and addressing audits or investigations by government agencies. One-third reported responding to a demand letter from a government agency or contractor.

Serious legal encounters with the government were reported at a much lower level. One out of five respondents reported self-disclosure to the DOJ, OIG, and CMS. About one out of eight respondents reported their organization being involved in the settlement process with DOJ; self-disclosing to the OIG engagement of sanctioned individuals/entities; and being involved in a settlement process for a CIA.

What encounters with governmental authorities has your organization had in the last 5 years?

62% HIPAA Breach (disclosure to or investigation by OCR)

53% Self disclosure of overpayments

51% Government audit or investigation

32% Responded to a "Demand Letter" from a government agency/contractor

19% Self disclosure of potential violation of law or regulation (CMS, DOJ, OIG)

13% Involved in a settlement process with the DOJ

11% Self disclosure to OIG related to sanctioned individuals/entities

11% Involved in settlement process with OIG for a Corporate Integrity Agreement

10% Other (please specify)

These results are a warning bell to all Compliance Officers that regulators and enforcement officials are right around the corner, necessitating increased efforts in ongoing monitoring and auditing to mitigate exposure of compliance-related risk areas.

Concluding Comments

Over the past ten years of the Compliance Benchmark Survey, the responsibilities and expectations of Compliance Officers have continued to increase, especially as they assume responsibility for other functions, resulting in added challenges. Respondents this year reported a continuation of this trend, but without a corresponding increase of budget and staff. Compliance offices remain lean, with 65% having five or fewer staff, and 30% having only one full- or part-time person. Respondents indicated increased reliance upon vendor tools (hotline, sanction screening, eLearning) to meet obligations. This is consistent with the industry trend to focus on core responsibilities using internal staffing and to use vendors to assist with ancillary needs.

Despite OIG compliance guidance, only 29% have their compliance program independently measured for effectiveness, relying instead on self-assessments, checklist tools, internally generated surveys, and the like, activities that would be considered ongoing program monitoring.

Continuous monitoring of the program to verify that it is meeting obligations needs to be done by parties independent of the operations of the program in order to garner objective reviews. Furthermore, the evidence of the survey suggests that effectiveness is often measured in terms of output, rather than outcome. Also, it is important to benchmark compliance program improvements. Although the OIG calls for such measurements to evidence effectiveness of efforts, they were not in evidence in the survey.

Additional methods are suggested for gaining insights into the effectiveness of the compliance program, including better methods of gaining employee feedback regarding the understanding of the code of conduct, compliance policies, training lessons, use of communication channels, and overall trust in the program. Only a few organizations use professional testing and surveying for employee compliance understanding and commitment; most rely upon informal and internally generated processes.

About Strategic Management Services

Strategic Management Services, LLC (Strategic Management) was founded over 25 years ago by Richard Kusserow, who had served 11 years as DHHS Inspector General. The firm is a pioneer in healthcare compliance and was the first consulting firm to focus on it – before the government had even issued any formal compliance program guidance documents for the industry. The firm has assisted over 2,000 healthcare organizations with regulatory compliance services, such as the development of compliance program infrastructure, evaluation of compliance programs, standard of conduct development and reviews, compliance training programs, hotline setup, risk assessments, claims data analysis, assistance with the CIA requirements, IRO duties, and litigation support. Strategic Management also operates the Compliance Resource Center (CRC), which provides tools for Compliance Officers, including hotline services, policy development, eLearning, sanction screening, and compliance surveys.

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• provides ethics and compliance learning courses and tools

• automates core compliance processes

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