

Boards Should include Compliance Experts as Members

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Key Points:

- **Boards should have a member who is knowledgeable about compliance**
- **Many CIAs mandate boards engaging Compliance Experts**

The Department of Health and Human Services Office of Inspector General (OIG) and the Department of Justice (DOJ) have long held that effective compliance programs begin at the board level and then flow down through the executive leadership and compliance officer to all employees. The OIG and the American Health Lawyers Association (AHLA) issued three communications underscoring the board's duties and responsibilities in overseeing an organization's compliance program:

- [An Integrated Approach to Corporate Compliance: A Resource for Health Care Organization Boards of Directors](#)
- [Corporate Responsibility and Health Care Quality: A Resource for Health Care Boards of Directors](#) (with the Associate of Healthcare Internal Auditors and the Health Care Compliance Association)
- [Practical Guidance for Health Care Governing Boards on Compliance Oversight](#)

The Practical Guidance document promoted the use of independent *Compliance Experts* by boards and organizations to assist in evidencing an effective compliance program. It advises boards to have compliance experts available to make sure the board meets all its fiduciary duties and obligations in overseeing corporate compliance. As such, it is advisable for board membership to include someone with health care compliance experience by either having served as a compliance officer, been a compliance consultant, is an attorney specializing in healthcare compliance, or is otherwise experienced in compliance. Alternatively, the board should consider engaging an independent expert to assist them in providing the needed compliance oversight.

CIA Mandated Use of Health Care Compliance Experts

The Practical Guidance noted that the OIG has enhanced provisions in its corporate integrity agreements ([CIAs](#)) to include mandates for boards to have a compliance expert with expertise in federal health care program compliance requirements to assist them in meeting their oversight duties and responsibilities. Under a CIA's mandated provisions, the compliance expert engaged by a board or entity must certify that they are independent and that they will adhere to objectivity standards of the Government Accountability Office's most recent Government Auditing Standards for operational reviews. Once engaged, the expert is obligated to create a work plan and then conduct a review that results in a *Compliance Program Review Report* focusing on the mandated review and recommendations. A copy of the compliance expert's report must be included in each annual report under the CIA. Copies of materials provided by the compliance expert to the board and minutes of meetings are to be made available to OIG upon request.

With the foregoing in mind, compliance officers should take steps to educate their boards about this subject and give thought as to how to advise them to meet the obligation.

For more information on this topic, contact Richard Kusserow (rkusserow@strategicm.com).

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