

Behavioral, Home Health, Hospice, and Physician Practice Compliance Programs

Richard P. Kusserow | January 2024

Key Points:

- **Enforcement on the rise**
- **Absent a program increases enforcement encounters, liabilities & penalties**
- **Challenge is how to afford an effective Compliance Program**
- **New OIG Guidance offers suggestions for implementing programs**
- **Outsourcing to compliance experts is recommended as an affordable solution**

Hardly a day goes by without another enforcement action by the DOJ or OIG against those involved in behavioral health, home health, hospice, and physician practices. The OIG November 2023 “[General Compliance Program Guidance](#)” noted that they found from their investigations and settlements that smaller organizations were unable to evidence a working compliance program. This underscores the importance that the OIG places on an effective compliance program. They warn that failure to have one increases the likelihood of enforcement with increased penalties. They see an effective compliance program as the best defense to avoid having encounters with enforcement agencies, and no healthcare organization, regardless of size, can afford to not have one that focuses on adherence to laws, regulations, and proper standards.

OIG Guidance on Small Company Compliance Programs

The OIG also recognized that “small entities, such as individual and small-group physician practices, or other entities with a small number of employees, may face financial and staffing constraints that other entities do not.” They may be operating on a scale that makes it challenging to afford even one full-time person as their Compliance Officer, and having someone perform the duties as a secondary responsibility is a formula for a bad result. Just keeping current with ever-changing laws and regulations is a “daunting task.” They noted that “[s]mall entities that

cannot support a compliance officer on either a full-time or part-time basis should consider designating one person as the entity's compliance contact and have them be responsible for ensuring that the entity's compliance activities are completed." In other [OIG Compliance Program Guidance documents](#), the OIG states, "For those billing companies that have limited resources, the compliance function could be outsourced to an expert in compliance," who can be a part-time alternative to a W-2 employee Compliance Officer. The key point is to engage an expert and not risk having someone not adequately qualified to assume compliance program responsibility. The consultant compliance expert could be either an Interim Compliance Officer responsible for developing and managing the program, leaving the entity to decide on the permanent need, or a Designated Compliance Officer responsible for the entire compliance program.

Engaging an External Compliance Officer

Another factor to consider is that HIPAA compliance is in addition to corporate compliance, and the burdens for that program can match the other compliance responsibilities. This means HIPAA compliance could easily be folded under work for a single healthcare compliance expert. There are several other benefits of [engaging a compliance expert](#) to act as the Compliance Officer:

- 1.** No learning curve on what needs to be done or how to do it
- 2.** Brings expertise, experience, and knowledge from other engagements
- 3.** No recruitment or training costs as would be for a W-2 employee
- 4.** No delay, able to start immediately
- 5.** Work is done part-time at a lower cost than for an employee
- 6.** Pay is only for the hours of approved task work
- 7.** No added overhead employee costs (e.g., FICA, leave, benefits, etc.)
- 8.** Have prior experience in adapting compliance programs to smaller organizations
- 9.** Can be terminated at any time by simple notice
- 10.** Can provide their own multi-million dollars liability insurance coverage

Request from rkusserow@strategicm.com more information on these models in terms of structure, developing scope of work, time, effort, and costs.

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About the Author

Richard P. Kusserow established Strategic Management Services, LLC, after retiring from being the DHHS Inspector General, and has assisted over 2,000 health care organizations and entities in developing, implementing and assessing compliance programs.