



A subsidiary of  Crowe Horwath. LLP

5 Barriers to an Effective Compliance Program

By John McSwain, CPA, and Kenneth Zeko, J.D.



In today's evolving healthcare marketplace, providers face increasingly complex risk and compliance challenges. And as regulatory pressures on healthcare organizations have increased, there has been an uptick in enforcement activity by the federal government, which has become more aggressive at seeking out fraud, waste, and abuse in the healthcare industry. Because this trend is expected to continue, healthcare organizations must have robust compliance programs.

Recent high-profile healthcare fraud cases in the news underscore that prosecuting healthcare fraud and abuse is a high priority for the U.S. Department of Justice (DOJ) and the FBI.

In fact, the DOJ obtained more than \$3.5 billion in settlements and judgments from civil cases involving fraud and false claims against the government in the fiscal year ending Sept. 30, 2015.¹ Of the \$3.5 billion that was recovered, \$1.9 billion came from the healthcare industry for alleged violations, including providing unnecessary or inadequate care, paying kickbacks to healthcare providers to induce use of certain goods and services, and overcharging for goods and services paid for by Medicare, Medicaid, and other federal healthcare programs.²

It's worth noting that despite the cost of investigating and prosecuting these cases, the federal government receives a return on investment rate of 610 percent. In other words, for every dollar it spends investigating fraud, it gets back more than \$6.10 in fines and recoveries.³

Now more than ever, healthcare organizations should take a closer look at their compliance programs to ensure they are strong enough to ward off the types of exposures that subject organizations to investigation and, even worse, prosecution. Here are five situations that can be barriers to an effective compliance program and ideas about how to overcome them.

1. Not Informing Senior Leadership About Compliance

Because senior leadership and board members may not be as informed about the rules and regulations as individuals on the front lines of compliance, it is important that compliance officers make sure leaders are educated about regulations and kept up to date with changes in the field. The executive leadership team and the board should be informed of their roles and responsibilities – and liability – with regard to compliance.

One approach to overcoming this barrier is to educate senior leaders and board members on the Office of Inspector General's "Health Care Compliance Program Tips."⁴ In addition, sharing news of recent healthcare fraud cases and settlements can help drive home the importance of having a strong compliance program.

2. Not Making Compliance Part of the Organization's Culture

To assess the strength of a compliance program, an organization needs to look at the extent to which the organization's culture is conducive to making compliance activities a priority. Compliance officers should ask some questions about the organization:

- Are there significant resources dedicated to the compliance function?
- Is there an adequate reporting structure in place to address compliance issues?
- Does the organization conduct regular compliance risk assessments?
- Is there a documented process for investigating alleged issues of noncompliance?
- Is there an appropriate set of disciplinary measures in place within the organization to handle compliance infractions?

The DOJ asks many of these same questions when investigating an organization for potential fraud. In the past, it may have been enough to say the government just wants to see that an organization has a compliance program. In today's landscape, the government wants to see that an organization has an effective compliance program and how that organization reacts to alleged breaches of its internal controls.

3. Not Being Proactive

Having a compliance program that keeps up to date with the regulatory environment and its changing rules and regulations is essential. A well-prepared organization with a good, substantive compliance program doesn't wait until there's an investigation to institute compliance policies. It conducts regular risk assessments of its business practices and takes a close look at the environment in which it is operating to see whether updates or changes need to be made. Until an organization understands where its compliance risks are, its compliance program can't perform its vital function of mitigating those potential regulatory risks.

4. Not Having a Plan in Place Should Things Go Wrong

A good compliance program sets the organization up to respond quickly to an investigation, including having the proper team members in place to respond to an unfortunate event.

With the incentives the federal government is giving to whistleblowers for their role in prosecuting cases of abuse and fraud – a whistleblower today could stand to earn upward of 15 to 25 percent of the recovery in a settlement – the healthcare field is going to see more and more fraud investigations, and organizations are going to need to be ready to respond to them.

5. Not Making Compliance Everyone's Job

While it is the compliance officer's job to verify that the organization as a whole is compliant, everybody in the organization is responsible for compliance, including the individuals who perform patient intake, the caregivers performing and ordering the healthcare services, and the billing department. All individuals across the entire continuum of care need to make sure they are in compliance with governmental rules and regulations.



A subsidiary of  Crowe Horwath LLP

Learn more

John McSwain

+1 469 801 4313

john.mcswain@crowehorwath.com

Kenneth Zeko

+1 214 777 5220

kzeko@chanllc.com

Essential and Beneficial

Staying on top of regulatory compliance is essential for today's healthcare providers. Having a strong compliance program in place not only helps protect organizations from financial and regulatory risk, but it also contributes to the creation of an ethical environment that provides safe, quality care to patients.

¹ "Justice Department Recovers Over \$3.5 Billion From False Claims Act Cases in Fiscal Year 2015," Department of Justice, Office of Public Affairs, Dec. 3, 2015, <https://www.justice.gov/opa/pr/justice-department-recovers-over-35-billion-false-claims-act-cases-fiscal-year-2015>

² "The Department of Health and Human Services and the Department of Justice Health Care Fraud and Abuse Control Program Annual Report for Fiscal Year 2015," U.S. Department of Health and Human Services and U.S. Department of Justice, February 2016, <https://oig.hhs.gov/publications/docs/hcfac/FY2015-hcfac.pdf>

³ Ibid.

⁴ "Health Care Compliance Program Tips," Health Care Fraud Prevention and Enforcement Action Team, Office of Inspector General, <https://oig.hhs.gov/compliance/provider-compliance-training/files/Compliance101tips508.pdf>

www.chanllc.com

www.crowehorwath.com

CHAN Healthcare is a subsidiary of Crowe Horwath LLP.

In accordance with applicable professional standards, some firm services may not be available to attest clients.

This material is for informational purposes only and should not be construed as financial or legal advice. Please seek guidance specific to your organization from qualified advisers in your jurisdiction.

© 2016 Crowe Horwath LLP, an independent member of Crowe Horwath International crowehorwath.com/disclosure

HC-17102-005G