

Compliance Programs

Improve effectiveness with three practices

By Nicolle Brooks, MBA, MAcc, CIA®, Rose Cruz, CIA®, and Rebecca Welker, CHIAP®, CIA®, FHFMA

The emergence of the Covid-19 pandemic created unprecedented challenges for the healthcare industry. As the Public Health Emergency (PHE) continues, many significant risks have emerged and are increasing the importance of compliance management and an effective compliance program. Consider three important effectiveness practices your compliance program should adopt, especially during the PHE, and what you can do to keep pace with the regulations, your organization and the industry.

Many health systems have been so significantly affected by Covid-19 that their compliance officers are faced with increasing challenges, including but not limited to resources being diverted to frontline caregiving. In some cases, even compliance officers themselves have been called to serve. Employee turnover, remote work environments and changing regulatory requirements have forced compliance officers to make a tough choice:

- Rely on the current compliance program and weather the storm of Covid-19 effects, or
- Seize the opportunity to adapt your compliance program to address current and new risks, even in the PHE, and emerge more capable of facing a post-pandemic future?

Regulatory environment

While regulations are not new to the healthcare industry, they often change and evolve. A compliance program must also change and evolve to effectively address and mitigate risks. The history of healthcare compliance spans over two decades. Notable developments include the publication of:

- [Office of Inspector General \(OIG\) Compliance Program Guidance for Hospitals](#) in 1998
- [Office of Inspector General Supplemental Program Guidance for Hospitals](#) in 2005
- [Department of Justice \(DOJ\) Guidance for the Evaluation of Corporate Compliance Programs](#) (Updated in 2020)

The updated version of the DOJ guidance sends a clear message that a complacent compliance plan is not an acceptable option. The guidance emphasizes the importance of a robust risk assessment process to ensure that a compliance program is designed and operating effectively to mitigate compliance risks.

This updated version requires organizations to take a more proactive approach to conducting a compliance risk assessment. In addition, the pendulum has swung through a shift toward needing to demonstrate effectiveness rather than just showing evidence that the compliance program exists. You must place a greater emphasis on analyzing the compliance program, because the DOJ expects the use of data and tools to drive the focus of the compliance work plan.

Self-assess

Your organization's compliance program should already be designed to detect misconduct. Now is the time for you to go deeper. Ensure your program is not stale, and aim to improve processes to better prevent, detect and remediate misconduct. Some questions that you should consider in this evaluation include:

1. Does your organization have a strong tone at the top that creates and fosters a culture of ethics and compliance with the law and demonstrates this conduct through example?
2. Does your compliance department have sufficient resources and expertise?

Adapt your compliance program to address current and new risks, even during the PHE.



Prepare to demonstrate program effectiveness rather than just showing evidence of its existence.

3. Are root cause analyses being performed on reported misconduct to determine why controls failed, what prior indications of control failures existed, and what the overall responsibility of management was?
4. Are policies and procedures appropriate, accessible to the employees and an accurate reflection of what occurs?
5. Have data analytics been incorporated into the compliance program auditing and monitoring processes?
6. Is the risk assessment current and subject to periodic review?
7. Does the organization incorporate lessons learned into their risk assessment?

As with previous risk assessments, factors such as the size of the compliance department, complexity of the activities conducted, past compliance issues, knowledge of the industry, and emerging risks should be considered. Using lessons learned during the pandemic, consider performing a new risk assessment to determine if the compliance program itself is still functioning as intended, and identify any new high-risk areas. The pandemic has changed the way many organizations operate and compliance must adapt and evolve to overcome any identified compliance complacency.

Make program changes

As a compliance officer, what do you do with this information to improve your compliance program? Here are three considerations that, while important before the pandemic, are far more critical now. You can strengthen your compliance program to be seen as a valuable resource for the organization by adopting three goals:

- Align with your organization's strategy
- Increase internal data monitoring collaboration
- Reinforce that compliance is everyone's responsibility

Align with your organization's strategy

Early in the PHE, health systems were in survival mode wondering how to adapt to the unprecedented circumstances. A shutdown in elective procedures had occurred, telehealth services had increased significantly, many support staff were working from home and needed to be productive, and clinical staff needed to be kept safe amid shortages of personal protective equipment and extreme stress and fatigue.

Your compliance program needs to recognize and closely align with your altered organization for success in a post-pandemic world. Every compliance program must know what its organization is trying to achieve to prioritize the compliance risks that could keep the organization from achieving its strategy.

Understanding organizational strategy should not be an afterthought. The compliance officer should have a seat at the table to stay abreast of upcoming strategic initiatives and goals. You can provide input on potential risks and the design of mitigation efforts before any new strategy begins.

Find out where your organization is headed so you can help accomplish strategies and initiatives in a compliant manner. For example, acute-care at home programs are gaining significant attention with health systems and the patients they serve. The significant strategy will touch virtually every department of the hospital to function effectively. Acute-care at home programs may completely transform care delivery with corresponding compliance concerns that will have to be managed.

Increase internal data monitoring collaboration

The pandemic has taught the healthcare industry that collaboration must exist for strategic and operational progress, and a data-driven approach is an essential facilitating element. The compliance function of a health system is no exception.

Your department will never have enough resources to handle all the compliance monitoring that is necessary. Consequently, collaboration with many areas throughout your organization must become standard operating procedure. Training and engaging functions, service lines and departments throughout the organization to monitor and report their continuous monitoring of high-risk areas are necessary. The benefits include increasing awareness of compliance matters, enabling earlier identification of issues and creating a common culture around compliance.

Collaboration is a differentiator for compliance excellence rather than a chore that must be checked off a list. Identifying an issue before discovery by a payer or regulator is preferable. Quality on the business side, like clinical quality at the bedside, is a desirable goal for your organization and compliance program.

Reinforce that compliance is everyone's responsibility

Compliance as everyone's responsibility is not a new concept but one that requires periodic reminders. Coming out of the pandemic seems like the right time to bring up the concept again. Every year, billions of dollars are improperly expended because of healthcare fraud, waste and abuse. The waste affects everyone from providers to payers to patients.

Because the regulations and rules are complex and ever-changing, distributing the awareness and accountability for compliance is the only way a health system can hope to minimize takebacks, self-disclosures, and regulatory inquiries and investigations. Compliance must be ingrained as everyone's responsibility.

Every employee must protect patients and follow laws and regulations, which requires knowledge of standards of conduct, policies and procedures, and the ability to recognize and report suspected noncompliance. The effectiveness of the compliance program increases when the number of people who can monitor their own performance increases.

The compliance program must stay in step with the organization's strategy by providing valuable insight into risks that may lie ahead of evolving strategy. An effective compliance program should be viewed as a strategic function within the healthcare organization because its reach spans the entire organization with the goal to protect the organization so that its strategy and mission can be achieved.

Obtain an independent assessment

As your organization is trying to keep pace with constantly changing and increasing regulations, the healthcare industry continues to evolve at unprecedented speed. Volatility is the new normal. Adapting your compliance program should become a natural and dynamic process.

Ask yourself these questions:

- How effective or mature is my compliance program considering current conditions?
- How does my compliance program compare to others in the healthcare industry?
- What relevant benchmarks should be used to measure the effectiveness of my compliance program?

Having a third party conduct an independent compliance program effectiveness assessment every three to five years is a best practice that brings an outside viewpoint in response to these questions. The independent assessment is also a good way to bring important issues to light that the compliance team might not notice in the course of day-to-day work. Perform an internal self-assessment every year to validate your effectiveness.

An outside viewpoint can be a valuable tool in keeping a compliance program effective, proactive and adaptive in an evolving industry. The desirability of a fresh set of eyes means that you are not hiring the same firm for every evaluation to tell you the same thing. Periodically hire others to get new insights and perspectives.

Independent assessors all have experience and knowledge that you can use as benchmarks to compare your policies, processes and practices. Learn how to conduct a robust compliance risk assessment and maintain a monitoring program that involves almost everyone across the organization and not just the compliance team. Find out how to overcome the challenges of obtaining data and utilizing analytics to drive your compliance risk assessment, create and update your compliance work plans, monitor compliance risk trends, and validate the sustainment of implemented process improvements.

Conserve resources by learning about best approaches and techniques from others, assessing how to customize these techniques to your organization, and continuously evaluating how your compliance program is adapting to the constantly changing healthcare landscape.

Achieve a strong tone-at-the-top to ensure a culture of ethical compliance with the law.

Key takeaways

Pandemic or not, now is not the time for a complacent, static compliance program. As our industry and its regulations become more complex, organizations are now, more than ever, exposed to greater degrees of compliance risk.

Although you should continually assess your compliance program, now is the time to build a stronger program that is more resilient and adaptive. Align with your organization’s strategy, increase internal data monitoring collaboration and reinforce that compliance is everyone’s responsibility.

As your organization continues to adjust its strategies and find a new normal, you must take time to reflect on lessons learned and reevaluate risks and the overall compliance

program. Bring in a fresh set of eyes to assess your compliance program effectiveness to determine what is working and how well you are adapting. **NP**



Nicolle Brooks, MBA, MAcc, CIA®, is an Internal Auditor at Crowe Healthcare Risk Consulting LLC. She is experienced in the areas of compliance, ethics, supply chain, revenue cycle and quality. Nicolle can be reached at Nicolle.Brooks@crowehrc.com and 314-802-2812.



Rose Cruz, CIA®, is a Senior Audit Manager at Crowe Healthcare Risk Consulting LLC. She is experienced in internal audit, healthcare regulatory and clinical compliance, risk assessment, business processes, financial accounting and auditing, and project management. Rose can be reached at Rose.Cruz@crowehrc.com and 630-765-0895.



Rebecca Welker, CHIAP®, CIA®, FHFMA, is a Senior Vice President at Crowe Healthcare Risk Consulting LLC. She leads the Clinical Risk Services Practice comprised of nurses performing clinical engagements designed to improve clinical performance and reduce pay-for-performance penalties. Rebecca can be reached at Rebecca.Welker@crowehrc.com and 314-802-2055.

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