



# Compliance TODAY

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## **COMPLIANCE 101**

# The seven essential elements, Part 2: Designating a compliance officer and compliance committee

- » The purpose of a compliance officer is to be neutral and free of bias.
- » Every large organization needs a compliance committee.
- » Key starting points will help guide you as a compliance officer.
- » The compliance officer should participate in designating members of the compliance committee.
- » Preparing for challenges associated with the role will ease the transition.

**Adam K. Weinstein** ([aweinstein@nyp.org](mailto:aweinstein@nyp.org)) is Vice President, Regulatory Affairs and Corporate Compliance at New York Hospital Queens in Flushing, NY.

**Cindy Hart** ([cindy.hart@ctca-hope.com](mailto:cindy.hart@ctca-hope.com)) is Senior Physician Compliance Specialist with Cancer Treatment Centers of America in Schaumburg, IL.

 [bit.ly/HCCAnet-CindyHart](http://bit.ly/HCCAnet-CindyHart)

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**C**ongratulations! An organization designated you as its compliance officer (CO). Are you ready? This role is exciting, rewarding, and challenging from all directions. Before you strap on your helmet and grab your gear, let's remember your role is not that of a fire marshal or police officer.

As a newer profession, several organizations continue to struggle with defining the role of the compliance officer. On the other hand, there are several organizations that understand the role completely, support the profession, and readily

receive compliance guidance necessary to survive in an increasingly regulatory climate. Be sure to reference appropriate resources to remain grounded to the true purpose of the role.

### **Why should the organization need or designate a CO?**

Many organizations acknowledge their need for a compliance officer and designate one. Other organizations are not quite convinced there is a need, but designate someone who fulfills multiple roles. Fortunately, your organization understands the need and designates you to eliminate the void.

The CO is instrumental in assisting the organization to avoid exposure to risk and reduce the potential for whistleblower actions. Although appointing a CO is not a legal requirement, the Office of the Inspector General



Weinstein



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(OIG) and the Federal Sentencing Guidelines recommend designating a compliance professional. Organizations need an individual who is “neutral, unbiased and un-conflicted” and capable of influencing and working collaboratively with all levels of management. The compliance officer must have the authority to “prevent, identify, and fix problems.” The CO should be a part of senior management (the executive team), reporting directly to the CEO with a dotted line to the board of directors; however, in order to maintain independence, the CO should not also fill the role of CEO, CFO, or general counsel.

### **What should you do for the organization?**

Although there are numerous resources available online and at local bookstores, a compliance officer must reference the core materials initially. The core materials are Chapter 8 of the Federal Sentencing Guidelines, OIG compliance program guidance, and regulations impacting their organization’s industry. Understanding the core materials initially provides the compliance officer with a foundation to remain grounded.

The organization expects the compliance officer to deliver on the responsibilities of the job description. At the same time, the compliance officer is to lead the organization by providing guidance consistent to the core materials previously mentioned. To do this, the CO must remain visible; the role needs to remain visible. If these items are not aligned, the compliance officer is responsible for ensuring these items become aligned. According to *Compliance 101*,<sup>1</sup> “The main focus of the position should be the implementation, administration and oversight of the compliance program.” Because the organization’s goal is to implement an effective compliance program, the compliance officer has a duty to ensure the program mirrors, to the extent possible and based on size and culture, an effective compliance program as defined by the Federal Sentencing Guidelines and OIG compliance program guidance.

On the first day, you as the compliance officer must equip yourself with your best smile and introduce yourself to the key operational leaders. During the introduction, inform each operational leader that you look forward to scheduling a more formal meeting to learn more about their operations. Eventually, you will recruit these individuals as members of the compliance committee.

Establish a plan. Advise your direct report, for example, that you need a 30-day plan (or longer) before contributing certain findings or even establishing a compliance committee. Make yourself visible, depending on the size or type of organization; make visits to all the patient care units, clinical departments, service departments, and community centers. Attend as many committee meetings as you can. The business is probably a 24-hour operation, so make time and meet with supervisors and staff on the off hours. You are now ready to establish a compliance committee.

The compliance committee is an effective means to focus on difficult compliance issues, demonstrate a management commitment to compliance, and facilitate communication on compliance issues within an organization. The committee must have the support, the resources, and the dedicated members with real experience in the compliance area. The compliance committee helps you to navigate legal obligations and serves a proactive role separate from the audit committee.<sup>2</sup> The compliance committee is responsible for many functions, but the primary function is to support the compliance officer.

When establishing your committee, include senior leadership from all disciplines. Many organizations are already experienced enough to know their leadership needs to be involved. Meet with members of the leadership and every other key member of your soon-to-be committee. See what their experiences are, understand their roles, their needs, their understanding of the compliance committee, and explain your vision.

To implement, administer, and provide oversight of the compliance program, the compliance officer must conduct a risk assessment to determine the existence of the seven elements of the compliance program, which are:

1. Implementing written policies, procedures, and standards of conduct
2. Designating a compliance officer and compliance committee
3. Conducting effective training and education
4. Developing effective lines of communication
5. Conducting internal monitoring and auditing
6. Enforcing standards through well-publicized disciplinary guidelines
7. Responding promptly to detected offenses and undertaking corrective action

Does each element exist? If so, determine each element's effectiveness level. If any element is missing, determine an implementation strategy and timeline to ensure you have a complete and effective compliance program. Effectiveness can be determined with probe audits, surveys, or informal meetings with department heads and frontline staff. Meeting with frontline staff also provides you with knowledge of the awareness level for the compliance program.

The compliance committee can assist in meeting many needs, by establishing a mission and vision, by conducting ongoing audits with meaningful reports, and by developing an air of free discussion on hard-pressed topics.

### **How do you meet the challenges?**

Many leaders describe the changing regulations as a roller coaster ride. As a roller coaster rider, you are aware that the ride is

unpredictable with sharp turns, huge drops, and loops. The goal is to walk away with a new experience while maintaining your possessions (e.g., sanity, loose change, keys, caps, etc.). To prepare, many riders move loose items from their front pockets into their back pockets. Additionally, they double- or triple-check seatbelts and lock bars before the attendant initiates a final check. Finally, those with less

experience grab and brace the lock bars during the ride; those with more experience wave their hands.

Similar preparations are necessary as a compliance officer. Regulations are rapidly changing, so

remaining in sync with these changes is very important. A compliance officer should have the applicable industry regulations readily available for reference. Whether it is a set of hardbound books updated regularly, smartphone apps, a list of applicable websites, or all of the above, compliance officers prepare for the unpredictable by equipping themselves with these items. Many smartphone apps and regulatory websites offer notification services that provide instant, daily, weekly, or monthly updates. Be sure to create a login and sign up for notifications.

### **Unpredictable with sharp turns, huge drops, and loops**

The second delay of ICD-10 is a recent example of an unpredictable sharp turn, huge drop, or loop. Depending on the professional, the response may be to gather more information, revise your plan, panic, or all three. Nonetheless, not many industry professionals predicted the ICD-10 delay. Many people in organizations throughout the industry felt the impact of the decision to delay the

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implementation date with a funny feeling in their abdomens, similar to that on a roller coaster ride. The ability to provide compliance guidance during and after an unpredictable event may reduce the intensity of the challenge. For the ICD-10 roller coaster, the CO must apply the steady hand by focusing on the positives of the delay. Emphasize staying the course for coding education and clinical documentation improvement efforts. Safeguard your organization's financial outlay by continuing to utilize applications, training, and testing of systems. Just as you feel more confident knowing the roller coaster has regular maintenance and safety checks, testing systems during the ICD-10 delay will provide additional assurance.

### **Walk away with an experience but maintain possessions**

Being a compliance officer is a challenging and often, rewarding experience. Confidently approaching each challenge that results in positive or negative outcomes is draining. According to participants of HCCA's "Compliance 101" sessions at the New York Regional Compliance Institute, compliance officers may face several challenges when implementing an effective compliance program. A few of the challenges are lack of commitment and buy-in, lack of funding, lack of resources and staff, no internal enforcement, and resistance to change.

To consistently meet each challenge with the same amount of energy requires maintaining a healthy balance between professional, social, and physical activities to prevent premature burnout. Socially, spend time with relatives and friends. These individuals are your support structure outside of the organization. Ensuring your schedule contains a designated timeslot for relatives and friends may eliminate premature burnout.

Physically, make sure to designate time for an activity that protects you from fatigue.

Walking between facilities, arranging walking meetings, or working out prior to or after work will keep you physically and mentally prepared for challenges.

### **Check seatbelts and lock bars**

As members of the Health Care Compliance Association and/or Society of Corporate Compliance & Ethics, compliance officers have access to a network of compliance professionals and resources. Networking with other compliance professionals may confirm or even expand your understanding of a regulation. Additionally, other compliance professionals may have addressed a topic within their organization; sharing the experience through communication is beneficial. The combination of referencing regulations and reference materials, applying what you've learned, and engaging the network may reinforce the guidance the compliance officer is attempting to deliver.

Compliance officers abide by the three principles of the Code of Ethics<sup>3</sup> published by HCCA: (1) obligation to the public, (2) obligation to the employing organization, and (3) obligation to the profession. As the new CO for your organization, you are the operator of the roller coaster (subject to industry changes) and responsible for the safety of the riders (your organization and its patients). You alert the maintenance department (CEO or board of directors) to potential risks, and ensure a positive experience for all involved. Thank you for accepting this role. We look forward to you contributing positive change to your organization and sharing your experiences with the compliance community. ☺

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1. Debbie Troklus and Greg Warner: *Compliance 101*. Third Edition. September 1, 2011. Health Care Compliance Association
2. Carla Wallace, Karen Voiles, Julie Dean: Health Care Compliance Program Tips. *QHR*; Article Number 68. Available at <http://bit.ly/1umYeXB>
3. HCCA: Code of Ethics for Health Care Compliance Professionals. Available at <http://bit.ly/hcca-code-of-ethics>