

Healthcare Boards of Directors: Responsibilities and Reporting

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1 Leading Person-Centered Care



Disclosure

- Kate Proctor, faculty for this educational event, has no relevant financial relationship(s) with ineligible companies to disclose.

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Learning Outcomes

- Upon completing this session, participants will be able to:
 1. Describe the role and responsibilities of healthcare boards in compliance and quality programs
 2. Identify what types of issues should be reported to the board
 3. Develop an action plan for engaging the board

Agenda

- Expectations for board oversight
- Board evaluation of the compliance program
- Board engagement in quality
- Reporting to the board
- Discussion and developing a plan of action

Board Oversight of Hospice Programs

- In general, healthcare boards of directors are responsible for:
 - Setting goals and objectives for the entity
 - Making (or approving) policies to effectuate goals
 - Overseeing all operational aspects of the entity (e.g., operations, finances, outcomes)
- Directors have a fiduciary duty to the entity and can be held personally liable (civilly, criminally) for violations of fiduciary duty
 - E.g., conflicts of interest, self-dealing, financial malfeasance
 - Applies to for-profit and not-for-profit boards
- In hospice, your board might be the “governing body” for regulatory purposes, or it might appoint or elect the governing body

Federal Requirements for Board Oversight

- Federal law and government enforcement agencies establish specific responsibilities for hospice boards of directors
 - Office of the Inspector General, HHS: “A critical element of effective oversight is the process of asking the right questions of management to determine the adequacy and effectiveness of the organization’s compliance program, as well as the performance of those who develop and execute that program, and to make compliance a responsibility for all levels of management.” (from *Practical Guidance for Healthcare Governing Boards on Compliance Oversight*)
 - 42 C.F.R. 418.100(b): “A governing body (or designated persons so functioning) assumes full legal authority and responsibility for the management of the hospice, the provision of all hospice services, its fiscal operations, and continuous quality assessment and performance improvement.”

Board Oversight of Compliance Program

- Boards are expected to be heavily involved in the oversight of the compliance program, including:
 - Establishing a robust compliance program
 - Ensuring the entire organization, including management, is aware of the compliance program, including internal reporting mechanisms
 - Developing mechanisms to stay up-to-date on current compliance guidance
 - Maintaining management accountability to report compliance issues to the board
 - Allocating resources to ensure the compliance program is effective
 - Directly overseeing the Chief Compliance Officer functions (in most cases)

Compliance Officer Role in Board Oversight

- As a Compliance Officer, do you:
 - Regularly report compliance issues and statistics to the board?
 - Report directly to the board (as opposed to another member of management)?
 - Conduct or coordinate compliance trainings with the board? With management?
 - Engage the board in annual/bi-annual risk assessments and development of a work plan?
 - Assist the board in periodic evaluations of the efficacy of the compliance program?

Board Engagement in Quality Program

- Boards have some oversight responsibilities for the quality program, but can delegate day-to-day oversight to a governing body
 - In hospice, the governing body has primary responsibility for oversight of the QAPI program
 - Oversight of a QAPI program substantially mirrors involvement in the compliance program, including:
 - Establishing a robust data-driving QAPI program that includes tracking and analysis of performance measures
 - Regularly review the QAPI analyses to evaluate the program's efficacy and to make improvements
 - Ensuring the QAPI program is prevalent through the hospice's operations and services

Quality Leader Role in Board Engagement

- As a Quality Leader, do you:
 - Regularly report on QAPI program data, sentinel or adverse events, effectiveness to the governing body?
 - Engage the governing body in annual/bi-annual QAPI program assessments and development of program or systemic improvement plans?
 - Assist the board in periodic evaluations of the efficacy of the quality program?

Reporting to the Board

- As described by HHS-OIG and CMS, the following types of issues should be reported to the board:
 - Data and analysis of the compliance program, such as:
 - Compliance hotline data
 - Compliance issues and investigations, including the results and corrective actions
 - Government-issued reports (PEPPER, CBRs)
 - HIPAA breaches and OCR reports
 - Employee and vendor OIG LEIE screening results
 - Progress toward annual/bi-annual work plan goals
 - Industry enforcement/compliance environment and updates to government guidance (e.g., OIG General Compliance Program Guidance)
 - External payment audits, results, any corrective actions (e.g., TPE, UPIC, SMRC)
 - Internal audit results and corrective actions
 - Others?

Reporting to the Board (cont.)

- As described by HHS-OIG and CMS, the following types of issues should be reported to the board:
 - QAPI data, information, and effectiveness analysis, such as:
 - HQRP metrics
 - Sentinel or adverse events, reportable incidents, including the results of any investigation and corrective actions
 - Survey results, including any corrective actions
 - Any internal or other external quality audit results and corrective actions
 - Policy/procedure updates
 - Others?

Discussion – Case Study

- At this point, given what you know or suspect, would you report this to your:
 - Full board of directors?
 - Board chair, or committee chair?
 - CEO?
 - Other member(s) of the executive team?
- If so, what would you report? How? (Formally, informally, in writing, verbally, etc.)
- If not now, when?

Plan of Action

- Work with your executive and/or board to evaluate your board's level of engagement and understanding of your compliance and QAPI programs
 - When was the last time the board was trained on compliance?
 - When was your compliance charter/program governing documents reviewed?
 - Since November 2023?
 - How often (or when was the last time) the board/governing body received a report on the QAPI program?
- Train (or coordinate a training for) board on revisions to OIG General Compliance Guidance
- Review compliance program charter/governing documents for potential update
- With board/governing body, review allocation of resources and responsibilities for quality and compliance programs
 - Given the current size and complexity of your organization, are enough resources being allocated?
 - Is the division of responsibilities between compliance/quality (if any) still working for your organization?
 - Do you have authorization/support for using outside resources (counsel, training) if necessary?

Resources

- “Practical Guidance for Health Care Governing Boards on Compliance Oversight,” Office of the Inspector General of the Department of Health and Human Services (“HHS-OIG”) (last updated 2015) *provided*
- HHS-OIG, *General Compliance Program Guidance* (newly updated Nov. 2023), available at: <https://oig.hhs.gov/compliance/general-compliance-program-guidance/>
- HHS-OIG, *Compliance Program Guidance for Hospices* (released 1999), available at: <https://oig.hhs.gov/documents/compliance-guidance/803/hospicx.pdf>
- “A Toolkit for Health Care Boards,” HHS-OIG (released 2012) *provided*
- CMS Internet-Only Manuals, State Operations Manual (Pub. 100-07), App. M, s. 418.58



Q & A

Thank You!