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HEALTH LAW CLIENT ALERT

NEW “PRACTICAL GUIDANCE FOR HEALTH CARE GOVERNING BOARDS ON COMPLIANCE OVERSIGHT”

The above-captioned [compliance guidance](#) was released on April 20, 2015 as the latest for governing boards of health care organizations (the “Guidance”). The Guidance is co-authored by the Office of Inspector General (the “OIG”) and the American Health Lawyers Association (“AHLA”), similar to previous resource guides on board compliance, but this time with the inclusion of the Association of Healthcare Internal Auditors (“AHIA”) and the Health Care Compliance Association (“HCCA”). The Guidance serves to update and expand the prior 2003, 2004, and 2007 resource guides on governing board compliance (see our prior Client Alerts [here](#) and [here](#)); it provides a high-level outline of a board’s compliance oversight obligations rather than a comprehensive resource. We strongly encourage health care organizations to provide a copy of the Guidance to board members and compliance officers.

The Guidance is organized into five categories: (1) Expectations for Board Oversight of Compliance Program Functions; (2) Roles and Relationships; (3) Reporting to the Board; (4) Identifying and Auditing Potential Risk Areas; and (5) Encouraging Accountability and Compliance. We have provided a few brief observations with respect to each category below.

Expectations for Board Oversight of Compliance Program Functions.

- The Guidance makes clear that the size and complexity of the organization plays a role in how a compliance program should be crafted; the smaller the organization, the more involved its board may need to be in compliance and ethics efforts. As organizations grow in size and/or services, their boards should ensure that compliance programs adapt accordingly.
- The Guidance recommends modeling an organization’s compliance and ethics programs on those of similar organizations (assuming such programs are well-regarded). The Guidance also suggests considering relevant Corporate Integrity Agreements, taking advantage of outside education programs, and periodically consulting with regulatory, compliance, and legal professionals.

- It is important for boards to stay abreast of the regulatory landscape and operating environment. In other words, boards should not just focus on compliance problems as they arise, but should be proactive in order to avoid problems.

Roles and Relationships.

- The organization's charter or other organizational documents should define the interrelationship of the audit, compliance, and legal functions. The Guidance envisions that each of these functions be functionally separate but coordinated.
- Organizations that do not or cannot separate audit, compliance, and legal functions should take measures to mitigate the potential risks of combining these roles. For instance, organizations should provide the individuals in these combined roles with the capability to execute each function in an independent manner when necessary, including assuring opportunities for reporting separately on these issues to the board and management.

Reporting to the Board.

- The audit, compliance, human resources, legal, quality, and information technology divisions should provide regular reports to the board concerning the organization's various risk mitigation and compliance-related efforts.
- Organizations have some latitude in crafting a reporting system and deciding which information must be reported. However, organizations should report to their boards certain information described in the Guidance, including internal and external investigations, serious issues raised in audits, notable hotline call activity, allegations of material fraud or senior management misconduct, and all management exceptions to the organization's code of conduct and/or expense reimbursement policy.

Identifying and Auditing Potential Risk Areas.

- Boards should require and ensure that the organization's management consistently reviews and audits potential risk areas, and that it implements and monitors related corrective action plans.
- The Guidance provides that in addition to addressing internal issues, risk assessment plans should consider recent industry trends giving rise to new potential concerns. In particular, the OIG suggests that the increasing emphasis on quality, industry consolidation, and changes in insurance coverage and reimbursement should be taken into account.
- In addition, the OIG notes that data made available by the push towards health care provider transparency may be used as a tool by organization boards.

Encouraging Accountability and Compliance.

- Compliance efforts should not be limited to particular employees of the organization, but rather must be the responsibility of the entire organization. Organizations can foster this

mindset through a system of defined compliance goals and objectives against which performance may be measured and incentivized.

- Boards should understand how the organization's management handles the identification of probable violations of law and how violations are reported.

The Guidance provides help in ensuring that your organization's compliance program is consistent with the OIG's expectations. If you have questions in this area or would like assistance, please contact Attorneys Jennifer Gallop (jgallop@kb-law.com), Emily Kretchmer (ekretchmer@kb-law.com), or Robert Griffin (rgriffin@kb-law.com).