

# 2022 Board Compliance Training



Audit & Compliance Committee of the CCH Board of Directors

July 19, 2022



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# Compliance Training Objectives

Today we will:

- Review Board Governance and Oversight Responsibilities
- Review the CCH Compliance Program & Regulatory Environment
- Answer any Questions
- Offer Additional Educational resources



# Board Governance and Oversight

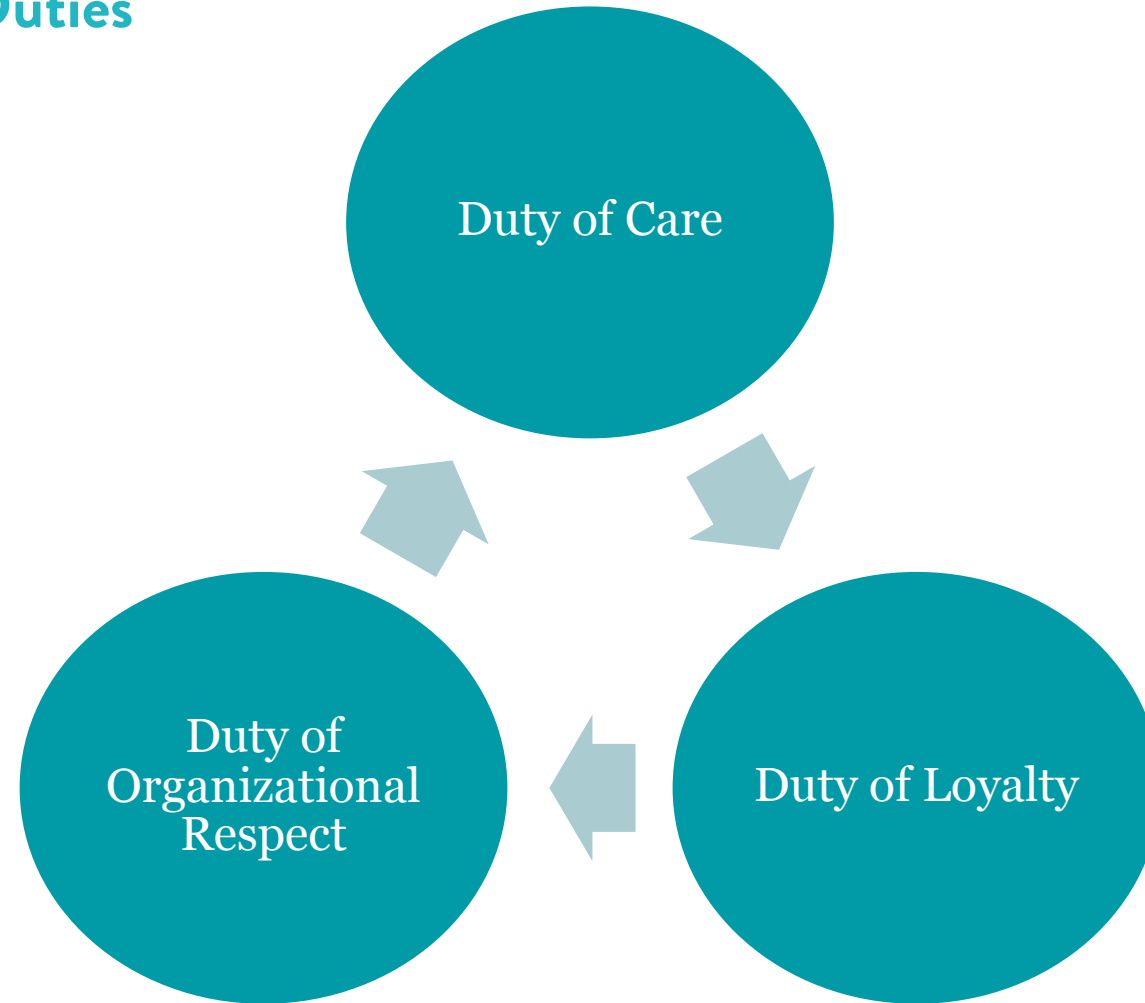
Discussion of Main Responsibilities



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# Fiduciary Duties of Board Members

## Three Fiduciary Duties



# Fiduciary Duties of Board Members

## Duty of Care

- Board members must exercise the same degree of **care and prudence** to managing the business and affairs of the organization as would be expected of them in the management of their own affairs.
- The concept of **reasonable inquiry** requires Board members to inform themselves of all reasonably available information that is material to their action or decision, including the duty to make inquiries of management to obtain the information necessary to satisfy their responsibility.
- Board members should take sufficient time to deliberate regarding their decisions, including time to consider the information before them, to ask appropriate questions of management and advisors, and discuss among themselves.



# Fiduciary Duties of Board Members

## Duty of Loyalty

- Requires Board members to act in a manner that the Board members **reasonably believe to be in the best interests of the organization**.
  - Essentially, it requires Board members to place the interests of the organization and its members ahead of their own interests.
- Within the duty of loyalty is the requirement that the Board member act in good faith. Good faith requires that the Board member be motivated to act in the best interests of the organization and act honestly and in a manner that is not knowingly unlawful.
- The duty of loyalty may be implicated if a Board member has a material conflict of interest or lacks independence from someone who has a conflict of interest with respect to the matter under consideration.

## Duty of Organizational Respect

- Requires Board members of an organization to **advance the organization's mission and protect its assets**.

# Board Oversight Obligations

## How to meet the Fiduciary Duties of Board

- Fiduciary responsibilities give rise to **decision making obligations** and **oversight obligations**, which require Board members to make sure that policies, procedures and reporting systems are in place to ensure that the organization complies with applicable regulatory, legal and financial requirements.

*“[A] director’s obligations include a duty to attempt in good faith **to assure that a corporate information and reporting system**, which the board concludes is **adequate, exists**, and that failure to do so under some circumstances, may, in theory at least, render a director liable for losses caused by non-compliance with applicable legal standards.”* Caremark Standard

*“Where [Board members] fail to act in the face of a knowing duty to act, thereby demonstrating a conscious disregard for their responsibilities, they breach their duty of loyalty by failing to discharge that fiduciary obligation in good faith.”* Stone v. Ritter, 911 A.2d 362, 370 (Del. 2006)

# General Board Responsibilities

## Board Members should:

- Establish a mission and values for the organization and ensure they are upheld.
- Act as stewards of the organization's human and financial resources
- Ensure compliance with organizational documents (Charter, Bylaws, Mission Statements) and the fiduciary duties of Board members.
- Establish long-range/strategic plans consistent with the mission and values of the organization.
- Approve technological utilization that affect the organization's ability to fulfill the mission.
- Develop strategies and approve proposals for significant relationships (mergers, acquisitions, partnerships, etc.).



# Board Responsibilities Related to Compliance

## Board Members should:

- Set the tone for and empower the Compliance Program.
- Ensure adequate resources are devoted to the Compliance Program.
- Establish formal lines for reporting potential compliance issues (both to management and to the Board).
- Oversee the effectiveness of the Compliance Program, including (where necessary) engaging outside resources to evaluate the program.
- Stay current with the legal and regulatory environment that impacts the organization.
- Stay informed on Compliance Program operations through periodic reports.
- Meet regularly with the Compliance Officer.
- Consult with Compliance subject matter experts, as necessary.

# HHS OIG Board Guidance for Compliance Oversight

“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.”

*-Practical Guidance for Health Care Governing  
Boards on Compliance Oversight*

# Board Involvement is Essential

## Per the HHS OIG Guidance

- The best Boards are those that are “active,” “questioning,” and “exercise (constructive) skepticism” in their oversight actions.
- Boards should not make assumptions, view their job narrowly, or shy away from tough questions.
- Boards should receive candid, timely, and comprehensive information on how the organization is doing.
- The Board should set the “tone” for an organization’s compliance program - “Top-Down Approach” or “Tone at the Top.”
- Board involvement and commitment is critical for a successful Compliance Program
- An organization’s Compliance Officer should have direct access and reporting to the Board.
- Compliance reports to the Board should be clearly understood, with comprehensive analysis of active compliance issues.

# Board Role is Focused on Governance

## Governance

- The Board is responsible for **direction and oversight** of the organization.
- Management/Hospital & Health Plan Leadership is responsible for the **day-to-day operations** of the organization. They are also responsible for **reporting appropriately** to the Board.

### *Examples of **Board** Responsibilities*

- Preserving the mission of the organization
- Providing oversight and strategy with a focus on the “big picture”
- Providing the framework for the work of the organization
- Establishing the “culture” of the organization
- Overseeing the ultimate performance of the organization to ensure conformance with the policies and strategies set by the Board.

### *Examples of **Management/Leadership** Responsibilities*

- Selecting and supervising staff to perform the day-to-day work of the organization
- Developing and implementing the budget and establishing operating procedures
- Keeping the Board informed and providing well-documented recommendations and information to enable the Board to perform its oversight and policy-making responsibilities

# The CCH Compliance Program

## A Brief Overview



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# Structure of the CCH Compliance Program

## Formalized Controls and Activities

The main purpose of the CCH Compliance Program is to **prevent** violations of laws, rules and regulations, **detect** violations as they happen and **correct** any issues that could lead to future violations.

### PREVENTION CONTROLS AND ACTIVITIES

Written Compliance Guidance

Compliance Program Oversight

Education and Training

### DETECTION CONTROLS AND ACTIVITIES

Effective Lines of Communication

Internal Monitoring & Auditing

Enforcement of Standards and  
Disciplinary Guidelines

### CORRECTION CONTROLS AND ACTIVITIES

Response to Offenses and  
Corrective Actions





# Regulatory Environment

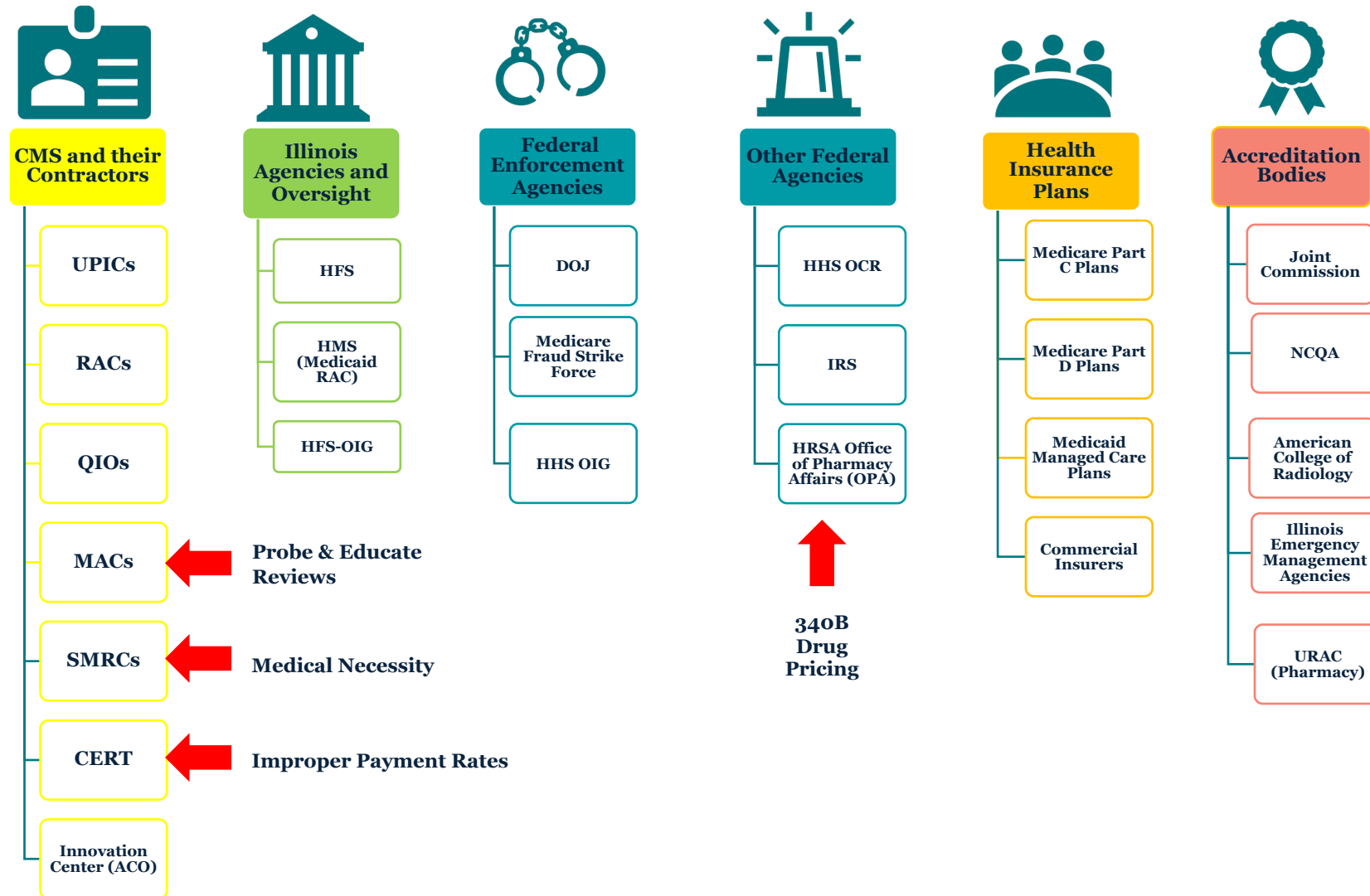
Health Care is *Highly* Regulated



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# The Health Care Regulatory Environment

And it is ever-expanding



# Applicable Laws & Regulations

## Legal Framework for Enforcement

Among the complex requirements that healthcare providers and health plans must navigate are the:

- False Claims Act
- Anti-Kickback Statute / Physician Self-Referral Law (Stark)
- Beneficiary Inducement
- EMTALA
- Health Insurance Portability and Accountability Act (HIPAA)
- Research Study and Grant Compliance
- Controlled Substances
- Professional and entity licensing requirements

# Questions?



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# Additional Reference Materials

**For Board Oversight**



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# Learning Resources for Board Members

- *The Health Care Director's Compliance Duties: A Continued Focus of Attention and Enforcement*  
[https://oig.hhs.gov/compliance/compliance-guidance/docs/health\\_care\\_directors\\_compliance\\_duties.pdf](https://oig.hhs.gov/compliance/compliance-guidance/docs/health_care_directors_compliance_duties.pdf)
- *Practical Guidance for Health Care Governing Boards on Compliance Oversight*  
<https://oig.hhs.gov/compliance/compliance-guidance/docs/Practical-Guidance-for-Health-Care-Boards-on-Compliance-Oversight.pdf>
- U.S. Sentencing Commission Guidelines  
<http://www.ussc.gov/sites/default/files/pdf/guidelines-manual/2014/GLMFull.pdf>
- OIG's Voluntary Compliance Guidance Documents  
<https://oig.hhs.gov/compliance/compliance-guidance/index.asp>
- OIG Corporate Integrity Agreements  
<https://oig.hhs.gov/compliance/corporate-integrity-agreements/cia-documents.asp>
- Evaluation of Corporate Compliance Programs  
<https://www.justice.gov/criminal-fraud/page/file/937501/download>



# Suggested Compliance Questions for Board Members

- *The Health Care Director's Compliance Duties: A Continued Focus of Attention and Enforcement* is designed to help health care organization's Boards of Directors ask knowledgeable and appropriate questions related to health care Compliance.
- The following slides contain some of the questions from this document and are targeted at helping Boards understand the scope and operations of the Compliance Program, including:
  - Compliance Program Structure
  - Compliance Program Resources
  - Compliance Infrastructure
  - Goals of the Compliance Program
  - Compliance Reporting
  - Delegation of Compliance Responsibilities
  - Addressing Significant Compliance Risks
  - Code of Conduct
  - Compliance Policies and Procedures
  - Compliance Violation Reporting
  - Responding to Suspected Compliance Violations or Identified Issues
  - Disclosure to Outside Authorities
  - Measures to Prevent Violations
  - Reporting Violations to the Board
  - Evaluation of Compliance Program Effectiveness
  - Keeping Current of the Changing Regulatory Environment



# Suggested Compliance Questions for Board Members

## Slide 1 of 6

### Compliance Program Structure and Oversight

1. How is the Compliance Program structured?
2. Who are the key employees responsible for it?
3. How is the Board structured to oversee the Compliance Program?

### Compliance Program Resources

1. What is the level of resources necessary to properly operate the Compliance Program?
2. How has management determined the resources for the Compliance Program?

### Compliance Infrastructure

1. Does the Compliance Officer have sufficient authority to implement the Compliance Program?
2. Has management provided the Compliance Officer with the autonomy and resources necessary to meet the challenges of the Compliance Program?

# Suggested Compliance Questions for Board Members

## Slide 2 of 6

### Goals of the Compliance Program

1. What are the goals of the Compliance Program?
2. What are the inherent limitations of the Compliance Program?
3. How are these limitations being addressed?

### Compliance Reporting

1. How frequently does the Board receive reports about Compliance issues?
2. Is adequate information being shared with the Board?

### Delegation of Compliance Responsibilities

1. Have compliance-related responsibilities been delegated across all levels of management?
2. Are all employees held equally accountable for meeting these compliance-related objectives during performance reviews?

# Suggested Compliance Questions for Board Members

## Slide 3 of 6

### Addressing Significant Compliance Risks

1. Does the Compliance Program address significant risks?
2. How were those risks determined?
3. How does the Compliance Program identify and incorporate new risks?

### Keeping Current of the Changing Regulatory Environment

1. How is the Board kept apprised of significant regulatory and industry developments affecting the organization's risks?
2. How is the Compliance Program structured to address such risks?

# Suggested Compliance Questions for Board Members

## Slide 4 of 6

### Code of Conduct

1. How has the Code been incorporated into corporate policies across the organization?
2. How does the Board know that the Code is understood and accepted across organization?
3. Has management taken affirmative steps to publicize the importance of the Code to all of its employees?

### Compliance Policies and Procedures

1. Are there policies and procedures for the Compliance Program operation?
2. Are there any that address Compliance risk areas and establish internal controls to counter those vulnerabilities?

# Suggested Compliance Questions for Board Members

## Slide 5 of 6

### Compliance Violations Reporting

1. Are there policies addressing appropriate protection of “whistleblowers” (those reporting misconduct)?
2. Is the reporting system being used?

### Responding to Suspected Compliance Violations or Identified Issues

1. What is the process for the evaluation and responding to suspected Compliance violations?
2. What policies address the protection of employees and the preservation of relevant information?
3. How are reporting systems monitored to verify appropriate resolution of reported matters?
4. Are disciplinary actions taken when an employee violates the Code and/or policies?

### Disclosure to Outside Authorities

1. What policies govern reporting to government authorities of probable violations of law?
2. What policies and practices are there for timely reporting of overpayments received?



# Suggested Compliance Questions for Board Members

## Slide 6 of 6

### Measures to Prevent Violations

1. What is the scope of Compliance-related education and training across the organization?
2. Has the effectiveness of such training been assessed?
3. What measures have been developed to enforce training requirements and to provide remedial training as warranted?

### Reporting Violations to the Board

1. What guidelines exist for reporting Compliance violations to the Board?

### Evaluation of Compliance Program Effectiveness

1. How are “at risk” operations assessed from a Compliance perspective?
2. Is conformance with the Compliance Program periodically evaluated?
3. Does the Compliance Program undergo periodic independent evaluation of its effectiveness?
4. What metrics and reports are being used? (Bad debt, research details, billing audits...)
5. What are this organizations greatest risks?