

Effective Compliance Program Elements - #6 Risk Assessment, Auditing, and Monitoring

By: Philip Hammarberg and David Traskey

- Philip Hammarberg:** Welcome to the Garfunkel Wild Podcast. My name is Philip Hammarberg, and I'm here with David Traskey. We're both partners with Garfunkel Wild.
- Philip Hammarberg:** Today, we're going to discuss the features that make up effective compliance programs. OIG has identified 7 elements of an effective compliance program. We're going to be discussing the 6th element: risk assessment, auditing, and monitoring.
- Philip Hammarberg:** David, what can you tell us about risk assessment, auditing, and monitoring?
- David Traskey:** Hi, Phil, thanks for having me again. I think the best place to start is to give our listeners a little bit of an understanding about what exactly a risk assessment is and so generically, a risk assessment is the process by which a provider or an organization identifies, analyzes, and responds to risks. Particularly those that are related to actual or potential violations of health care program requirements.
- David Traskey:** As a practical matter, the types of violations could be either actual violations or they could be potential violations based on certain acts, or even failure to act in certain circumstances.
- David Traskey:** And these types of risk assessments generally are performed at least annually, and when I think about it, I've got sort of a three-step process in mind.
- David Traskey:** The first step would really be to look at: as a practice or as an organization, what are our risk areas?
- David Traskey:** And the second step would be: how do we prioritize those risks? And one of the ways in which you can prioritize risks is through the creation of an annual work plan which we'll talk a little bit more about here in a minute.

- David Traskey:** And the third question that I would ask is: who are the key players that are going to help the compliance officer or the compliance committee assess those risks? It could be someone, for example, from the audit team or quality assurance, legal, or risk management. It's important to have kind of all the key players that you need at the table to be able to help you identify and prioritize those risks.
- Philip Hammarberg:** And how should an organization develop a risk assessment plan?
- David Traskey:** It does sound intimidating when you think about it from a large perspective, but really one of the best places to start, I find, and maybe I'm partial to this because I came from the OIG. But the OIG has lots of good information on its public facing website about the risk assessment process.
- David Traskey:** In particular, they have created several different tool kits to provide guidance, and in a structured approach on how to assess program risks, to measure compliance program effectiveness, to monitor adverse events, or advise health care boards.
- David Traskey:** And even to identify patients at risk of opioid use, among other topics. So don't feel like you've got to reinvent the wheel. There's going to be some good information out there that you can use as a starting point when thinking about how to identify and prioritize your risk areas and how to conduct the actual risk assessments.
- David Traskey:** Many, Phil, as you know, and we've talked about before, many of our listeners know that I'm a huge fan of data analytics and that the government is increasingly using data to identify different kinds of outliers. And so when we think about risk assessments, I also want to put a plug in here for data.
- David Traskey:** Entities should have access to their own data that they generate whether that data is held internally at your location, or whether it's by a billing contractor or some sort of external third party.
- David Traskey:** And it's important to understand the data that you have, how you can interpret that data, and how you can spot outliers because those are going to be some of the things that might make it into your work plan or your risk assessment when you're thinking about how to prioritize those things.
- David Traskey:** . And, it might be something like outliers about claims, denials, or medical necessity challenges, or maybe even patient data.
- Philip Hammarberg:** David to that point, it's important that providers have appropriate contractual rights with their vendors to access their data. That's something that is important to consider when they're negotiating those vendor contracts.
- David Traskey:** That's right, Phil, you couldn't be more right. It's vitally important to be able to have access to, or control of, your own data.
- David Traskey:** Equally important to using data to identify trends that help you find possible risk areas or other areas of noncompliance, it's also important to keep an eye out on

guidance that comes from external sources, or maybe legal and regulatory changes, as well as DOJ or OIG enforcement actions, and how they update their own work plans.

David Traskey: Because while it's not as good as having a crystal ball, it's probably the next best thing, because if you monitor and follow those developments, you sort of understand where government investigations or government regulators are looking. And certainly if those risk areas that they're looking at match up with your risk areas, then it's all the more reason to focus on those areas.

David Traskey: So that's my thoughts on risk assessments. Let's, if we can, move to auditing and monitoring.

David Traskey: When we talk about creation of a work plan, the work plan is going to include a variety of different topics, again, based on the specific risk areas that are particular to your practice. But it's also going to have some topics that I would classify as our routine monitoring of ongoing risks.

David Traskey: And so a few examples of routine monitoring of those known risks might include things like: making sure that you're conducting regular monthly screening of the OIG's listed of excluded individuals and entities and the state Medicaid exclusion lists to make sure that you're not hiring someone that you shouldn't be, as well as making sure that you're doing regular screening of the state licensure and certification databases to make sure that your staff is current on their licensing and credentialing.

David Traskey: Recently we've been working with some providers who perhaps were not as diligent in those areas, and that has now resulted in trying to help them navigate the process with government regulators, and resulted in paying some money back to the to the state and federal health care programs.

Philip Hammarberg: You know, I think it's important for organizations to make sure that they have good employment contracts in place that include representations and warranties, and perhaps even an indemnification, so that if a provider is not actually appropriately licensed or credentialed, perhaps it can mitigate, to a limited extent, the organization's risk in that perhaps they can get the employee to compensate them for the fees that they end up spending resolving the issue with the government.

Philip Hammarberg: Additionally, I should point out that Garfunkel Health Advisors, which is an affiliated consulting company, works with providers to assist with credentialing and enrollment, to ensure that everything is properly in place.

David Traskey: I think that's a great point, Phil, sometimes, as the saying goes, and you know "an ounce of prevention." Right? So if you do some of these things on the front end with respect to employment, making sure that your employment contracts are set up correctly, and making sure that you've got the enrollment and credentialing pieces nailed down, you might be able to save yourself some heartburn on a going forward basis, especially if you're audited by government regulators.

- David Traskey:** The last example I want to share with you about sort of routine monitoring of known risks. This is particularly true for most practices, because they have compliance programs. And so at least on an annual basis, you want to be taking a look at your compliance program materials, your policies and procedures, to make sure that they're still current, and to see whether or not they need to be updated in any kind of a meaningful way.
- David Traskey:** Those are sort of some examples of the routine ongoing risks. But then I just wanted to share with you, Phil, a couple other examples of maybe risks that are specific to a particular entity.
- David Traskey:** And so here some of the common ones: might be conducting regular reviews related to billing, coding, and documentation and to in part to make sure that you're identifying any overpayments that you may owe, and making sure that you have a plan in place to identify and repay those monies in a manner that's consistent with the 60 day rule.
- David Traskey:** Also, another example would be circumstances where you might have patient complaints or families of patients complaining right? It's important to track those and to review those and give them the due care that they that they deserve and to make adjustments as necessary, based on the findings of those complaints.
- David Traskey:** Lastly, another big one that people sort of run afoul of with some regularity, I think it relates to marketing, marketing practices, including particularly when providers or practices are giving free or discounted items or services to patients. Right? So making sure that if you're doing those things that you are complying with the Stark Law, the Anti-Kickback statute, the beneficiary inducements civil monetary penalty, and any other associated state laws and regulations, making sure that those things are on your radar, too, as a potential risk area.
- David Traskey:** Unfortunately, what I've seen sometimes is that providers have these work plans, they do the audits, and then they get the results, and they just kind of throw them in a drawer and check the box and say, "All right, we've done the audit for the year", you know, or "we've had an external audit done for the year", if you're not doing it internally.
- David Traskey:** So the first thing I would say is just important to make sure that your methods when you're conducting your audits are both objective and independent, so that if you're ever questioned by government regulators, you can show that your audit processes and procedures were above board. And the other thing, I would say, is equally important to be able to periodically measure the effectiveness of your risk assessment, your auditing, and your monitoring.
- David Traskey:** And this might be done by things like: after you look at the results, taking a deeper dive and doing a root cause analysis of any deficiencies that may arise so that you can figure out "how did this happen?"
- David Traskey:** And to implement some sort of a corrective action plan, so that you reduce the likelihood of having a similar issue happen again in the future.

- David Traskey:** It may be also that it's an opportunity for you to provide re-education to your staff or to establish new safeguards, new controls or new processes and procedures, or even policies, if they're necessary, to address a risk area that's identified.
- David Traskey:** So again, making sure that we're taking all the appropriate steps from identifying the risk, investigating the risk, addressing the risk, and figuring out how we can prevent it from happening again to the best of our abilities in the future.
- Philip Hammarberg:** Excellent. And thank you, David, and thank you to the listeners. We look forward to discussing our final compliance program element on a future podcast.