

Legal News Alert is part of our ongoing commitment to providing legal insight to our clients and our colleagues.

If you have any questions about this issue or would like to discuss these topics further, please contact your Foley attorney or any of the following individuals:

Janice Anderson

Chicago, Illinois
312.832.4530
janderson@foley.com

Maria E. Gonzalez Knavel

Milwaukee, Wisconsin
414.297.5649
mgonzalezknavel@foley.com

Cheryl Wagonhurst

Los Angeles, California
310.975.7839
cwagonhurst@foley.com

Judith A. Waltz

San Francisco, California
415.438.6412
jwaltz@foley.com

OIG and AHLA on Health Care Board Responsibility for Quality

The Department of Health and Human Services Office of Inspector General (OIG) and the American Health Lawyers Association (AHLA) state that the oversight of quality is a core fiduciary duty of members of the governing boards of health care organizations in, “*Corporate Responsibility and Health Care Quality: A Resource for Health Care Boards of Directors*,” released on June 27, 2007. The third in a series of educational resources for health care governance co-sponsored by OIG and AHLA, this paper focuses on the role of health care organization boards in promoting quality of care and ensuring patient safety in a regulatory climate where health care quality is emerging as a top enforcement priority for health care regulators.

Health Care Board Responsibilities

Members of the governing boards of health care organizations (Boards) have fiduciary duties to the organizations they serve that include responsibility for oversight of quality of care and patient safety. Both the duty of care (which members must exercise in Board decisions) and the duty of obedience to the organization’s purpose and mission (in nonprofit organizations) require the Board to monitor various quality processes, including quality reporting, quality improvement, and outcomes management. The paper emphasizes that a basic governance obligation is to guide and support executive leadership and to assure that the appropriate compliance mechanisms are in place to monitor quality of care and that patient safety.

The increasing public reporting of quality measures by private and public entities is part of an emerging trend of quality transparency in health care. Government, at both the state and federal levels, is focusing on transparency, not only on price, but also in the area of quality. Public availability of information previously kept private and used only for the internal operations of health care organizations could have a profound impact on public perceptions of health care organizations and the confidence in their governance.

Increased Government Enforcement for Health Care Quality

Boards of health care organizations are charged with complying with the extensive federal and state regulatory scheme that governs the quality of care delivered by health care providers. These regulatory standards of care, designed to promote a high level of patient care, soon will be used to determine a health care provider’s reimbursement. In a new era of the value-based purchasing initiative by Medicare and pay for performance, the extent to

ABOUT FOLEY

The Health Care Industry Team of Foley & Lardner LLP is a leader in identifying the trends and addressing the challenges sweeping the health care industry. Our staff of talented professionals includes former federal prosecutors, physicians, social workers, nurses, administrators, and in-house counsel. Drawing on the credentials and capabilities of these former industry leaders, we can thoroughly appreciate the legal challenges faced by organizations in the health care industry and apply this experience to help clients achieve success. We provide counsel on regulatory and governmental compliance, day-to-day business and operational issues, quality of care, and use of technology, including patient privacy as well as represent clients before administrative, regulatory, and legislative bodies.

Foley.com

Foley & Lardner LLP Legal News Alert is intended to provide information (not advice) about important new legislation or legal developments. The great number of legal developments does not permit the issuing of an update for each one, nor does it allow the issuing of a follow-up on all subsequent developments.

If you do not want to receive further issues of Legal News, please e-mail info@foley.com or contact Marketing at Foley & Lardner LLP, 321 N. Clark Street, Suite 2800, Chicago, IL 60610 or 312.832.4500.

which a health care organization can achieve and measure its quality will now determine the amount it will be paid.

Government enforcement authorities are increasingly focusing on the quality of care provided to beneficiaries of federal health care programs. The paper reports that OIG, the U.S. Department of Justice, and state Attorneys General are working collaboratively with health care regulatory agencies to address poor quality of care. As part of governmental enforcement efforts, authorities are closely evaluating quality reporting data to identify patterns of inconsistencies and evidence of ongoing quality problems. Inaccurate reporting of quality data could result in misrepresentation, the submission of false claims, and potential enforcement actions. Sanctions may range from monetary penalties to exclusion from federal and state health care programs and even incarceration.

Monitoring Quality of Care

Members of Boards today must be aware of the intense government focus on quality of care and fulfill their fiduciary obligations for oversight of quality and safety as an integral part of their role to ensure compliance within the organization. The paper, designed to educate Board members about their important role to oversee quality, and to help them ask knowledgeable and appropriate questions related to health care quality requirements, measurement tools and reporting requirements. It provides Boards with a series of questions to help evaluate the quality controls within the organization. Expectations of Boards for quality oversight are clearly set forth in the paper, and failure to meet them may well be viewed as problematic by OIG.

Although released at the AHLA Annual Meeting, the document has not yet been approved by the AHLA Board of Directors. It is expected to be released for general distribution by the end of the summer. The paper is available on the OIG Web site.

Your lawyers at Foley are deeply involved in helping clients evaluate and improve their quality controls and integrate them with compliance programs and has developed a team that specializes in the area of quality enforcement issues and compliance. Integration of quality and compliance is essential today where quality has become a top enforcement priority for the government.