



HAWAII HEALTH SYSTEMS
C O R P O R A T I O N

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COMPLIANCE ALERT 10-20

Proposed Changes in Sentencing Guidelines for Compliance Programs Published by the United States Sentencing Commission

The United States Sentencing Commission (USCC) is proposing changes in their "Sentencing Guidelines for United States Courts" that would affect how sanctions and fines would be levied against HHSC in the event of a compliance investigation. The proposed amendment makes several changes to Chapter 8 of the Guidelines Manual regarding the sentencing of organizations and strengthens the need for an effective, active compliance program.

The proposed amendment:

- Clarifies the remediation efforts required to satisfy Step 7 of the requirements for an effective compliance program that requires an organization to take reasonable steps to respond appropriately to the criminal conduct.
- Augments and simplifies the recommended conditions of probation for organizations by allowing the court to consider all conditional probation terms without separate conditions for either monetary penalties or other reasons. It also requires the engagement of an independent, properly qualified, corporate monitor for organizations on probation.
- Adds language that when organizations assess the risk of possible criminal conduct, high-level personnel, substantial authority personnel, and other employees "should be aware of the organization's document retention policies and conform any such policy to meet the goals of an effective compliance program under the guidelines and to reduce the risk of liability under the law."
- Changes the "culpability score" used in determining the fine to allow an organization to receive mitigation for "an effective compliance program even when high level personnel are involved in the offense if (A) the individual(s) with operational responsibility for compliance in the organization have direct reporting authority to the board level (e.g. an audit committee of the board; (B) the compliance program was

successful in detecting the offense prior to discovery or reasonable likelihood of discovery outside of the organization ; and (C) the organization promptly reported the violation to the appropriate authorities.”

These changes in the amendment will be voted on April 1, 2010. The Society of Corporate Compliance & Ethics has testified in strong support of these changes.

Source: Proposed Amendments. FEDREG 20100114—United States Sentencing Commission.