



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

"Touching Lives Every Day"

COMPLIANCE ALERT 10-28

USSC Releases Amended Sentencing Guidelines Affecting Healthcare Organizations

On April 29, 2010, amended guidelines affecting healthcare organizations were announced by the U.S. Sentencing Commission (USSC). These will become effective November 1, 2010 unless disapproved by Congress.

The main change is that a sentence for a convicted organization may be reduced sentence if:

1. "the individuals with operational responsibility for the compliance and ethics program...have direct reporting obligations to the governing authority or an appropriate subgroup thereof (e.g., an audit committee of the board of directors);
2. the compliance and ethics program detected the offense before discovery outside the organization or before such discovery was reasonably likely;
3. the organization promptly reported the offense to appropriate governmental authorities; and
4. no individual with operational responsibility for the compliance and ethics program participated in, condoned, or was willfully ignorant of the offense."

A new note in the guidelines defines "direct reporting obligations" as when the individual has express authority to communicate personally to the governing authority promptly on any matter involving criminal conduct or potential criminal conduct. In addition, the individual must have authority to communicate no less than annually on the implementation and effectiveness of the compliance and ethics program.

The sentencing guidelines allow for a convicted organization to receive a reduced sentence if, at the time of the offense, it had in place an "Effective Compliance and Ethics Program" which meets the requirements set forth in Chapter 8B2.1 of the current sentencing guidelines. This new amendment clarifies the remediation efforts required to satisfy the seventh minimal

requirement for an effective compliance and ethics program. This seventh criteria requires "...an organization, after criminal conduct has been detected, to take reasonable steps (1) to respond appropriately to the criminal conduct and 2) to prevent further similar criminal conduct."

The Amendment (Application Note to Section 8B2.1(b)(7)) clarifies that to meet this seventh criteria, upon detecting criminal conduct, an organization's obligation to institute reasonable remediation efforts includes:

1. taking reasonable steps to remedy harm resulting from the criminal conduct. This may include providing restitution to victims, self-reporting, and cooperation with authorities); and
2. assessing the compliance and ethics program and making necessary modifications to ensure the program is effective. An outside professional advisor may be used to perform the assessment and implement modifications.

The amendment also changes the recommended conditions of probation for organizations. This change removes the distinction between conditions of probation imposed solely to enforce monetary penalties and other reasons so that all conditional probation terms are available for a court to consider during sentencing. These conditions now include:

1. Developing and submitting an effective compliance and ethics program.
2. Notifying employees and shareholder of criminal behavior.
3. Submitting periodic financial reports accounting for business operations, disposition of funds, and disclosure of any other criminal actions against the organization.
4. Notifying the court immediately regarding any adverse change in business or financial prospects, bankruptcy, civil litigation, criminal prosecution, administrative proceeding, investigation or formal inquiry.
5. Providing reasonable number of regulars or unannounced examinations of books and records.
6. Making periodic payments in the following priority: a) restitution; b) fine; 3) any other monetary sanction.

Source: http://www.ussc.gov/2010guid/20100503_Reader_Friendly_Proposed_Amendments.pdf
<http://www.ussc.gov/2010guid/finalamend10.pdf>