

HOW TO CONDUCT AN EFFECTIVE INTERNAL INVESTIGATION

In recent years, the federal government has been particularly aggressive in pursuing civil and criminal enforcement against healthcare entities. Given the highly regulated nature of the field and the ever present risk of enforcement, companies operating in the healthcare space must conduct effective investigations when compliance issues arise internally or when the government comes knocking. Doing so may mean the difference between a manageable resolution of the issue and staggering civil or criminal liability. Here are some key considerations:

1. Understand Triggers

Companies learn about compliance issues through a number of channels, and understanding how an issue came to light is a critical first step to assessing what needs to happen as a result. An allegation from an unreliable source or a serial complainant may warrant an entirely different response than an issue raised through a legitimate compliance reporting pathway or as a result of a governmental inquiry.

2. Plan the Investigation

If an investigation is warranted, the company must determine who is best suited to conduct it. Some investigations are best completed internally, whether by human resources, the compliance department, or in-house counsel. Others require the assistance of outside counsel, especially when the issue is significant, the government is involved, or investigative independence is important.

3. Scope the Investigation

The scope of the investigation should reflect the magnitude of the issue under review and the goals and purpose of the investigation. Careful scoping keeps the investigation of a discrete issue from ballooning in scale and expense and also helps avoid the opposite mistake of devoting insufficient resources into investigating a serious issue that demands a comprehensive evaluation.

4. Collect and Preserve Key Documents

Collecting and preserving all potentially relevant documents is a critical step in any good investigation. Indeed, companies can quickly transform a manageable issue into civil sanctions or a criminal matter if they allow relevant documents to be lost or destroyed. Plus, only with a complete picture of all relevant documents can a company fully understand the issues at hand.

5. Conduct Meaningful Interviews

Effective investigations start with identifying key custodians who can guide the investigator to the critical documents and witnesses they need to complete their investigation. Once key documents have been reviewed and substantive witnesses have been identified, the investigator must conduct thoughtful, well-sequenced, and thorough interviews to ascertain all relevant facts.

6. Use Investigative Findings

Depending on the investigatory findings, internal steps, such as corrective action or employee discipline or education, are often warranted. But, more difficult decisions lie in whether the company must self-report a compliance issue or how much information the company should share with the government in an effort to resolve the issue at hand.

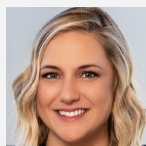
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