

BOARD OF REGENTS BRIEFING PAPER

1. **Agenda Item Title:** Policy Proposal – NSHE Compliance Department Charter
Meeting Date: September 7, 2017 meeting of the Audit and Compliance Committee

2. BACKGROUND & POLICY CONTEXT OF ISSUE:

In March the Audit Committee recommended, and the full Board approved, changes to the Board of Regents Bylaws expanding the scope of the Audit Committee to include compliance – and renaming the committee the Audit and Compliance Committee. The primary impetus for this change is the need to ensure robust compliance oversight over clinical medical/healthcare activities. The immediate need for this policy is driven by the transition between the two medical schools at UNR and UNLV which occurred on July 1, 2017. Nonetheless, medical/healthcare compliance is an important issue for any institution that performs clinical activities and this policy is intended to promote effective compliance for clinical activities System-wide.

The attached policy proposal establishes a Compliance charter and creates the NSHE Compliance Department, which is tasked with providing System-level oversight and support for institutional compliance efforts and activities. The policy makes clear that the institutions are and remain responsible for compliance related to their activities and for operating an effective compliance program. The policy does not dictate or mandate any particular compliance structure. Each institution's compliance structure should be based in its particular needs and activities. The policy is intended to establish baseline requirements that will ensure an effective compliance program and set forth, in general terms, the elements of such a program.

The policy imposes additional compliance standards on clinical medical/healthcare activities because those activities present unique compliance risks related to protected health information and government/insurer billing. As a result, the policy requires a written compliance plan for clinical activities and the designation of a specific person responsible for managing and administering the plan.

This policy proposal was initially reviewed and discussed by the Committee at its June 8, 2017 meeting. The Committee recommended approval of the policy with a requirement to report on the progress of the policy and the compliance program after one year. However, several questions about the policy were raised during the full Board's discussion of the Audit and Compliance Committee Report - and the Board directed that the policy be sent back to the Committee for further consideration.

Since that time - the proposed policy was re-circulated to the institutions for review and comment. Changes have been made to the policy based on feedback received from the institutions. The changes are reflected in the redline version of the policy that is attached as additional reference material.

3. SPECIFIC ACTIONS BEING RECOMMENDED OR REQUESTED:

That the Board approve the attached policy proposal establishing the Compliance Department Charter as a new Section E to Title 4, Chapter 9 of the Board of Regents' *Handbook*.

4. IMPETUS (WHY NOW?):

The primary impetus for this policy proposal is the need to ensure robust compliance oversight over clinical medical/healthcare activities. The immediate need for this policy is driven in large part by the transition between the UNR and UNLV medical schools.

5. BULLET POINTS TO SUPPORT REQUEST/RECOMMENDATION:

- Higher education is subject to myriad of compliance obligations. The failure to meet these obligations can have significant consequences – including suspension and disbarment from government programs. Therefore, System level oversight of institutional compliance activities is necessary and appropriate.
- The NSHE Compliance Department will provide oversight, serve as quality control, and provide

support to institutional compliance efforts and activities.

6. POTENTIAL ARGUMENTS AGAINST THE REQUEST/RECOMMENDATION:

The creation of the NSHE Compliance Department and System level oversight of institutional compliance efforts and activities is not necessary at this time because the compliance obligations fall directly to the institutions and not the System office.

7. ALTERNATIVE(S) TO WHAT IS BEING REQUESTED/RECOMMENDED:

Take no action on the attached Policy Proposal and continue the current compliance model.

8. COMPLIANCE WITH BOARD POLICY:

- Consistent With Current Board Policy:
- Amends Current Board Policy: Title 4, Chapter 9, by adding a new subsection E.
- Amends Current Procedures & Guidelines Manual: Chapter #_____ Section #_____
- Other:_____
- Fiscal Impact: Yes

Explain: Creation of the NSHE Compliance Department will have a fiscal impact – primarily the cost associated with the salary and benefit for the position of NSHE Director of Compliance (approximately \$160,000). Half of this cost is part is built into the existing System budget. The remaining half (approximately \$80,000) would be funded by the institutions using a cost allocation model developed in consultation with the institution business officers.

POLICY PROPOSAL
TITLE 4, CHAPTER 9 OF THE HANDBOOK,
Adding a new Section E entitled “Compliance Department Charter”

Additions appear in *boldface italics*; deletions are [~~stricken~~ and bracketed]

Section 1. Preamble

Higher education is subject to a myriad of compliance obligations. The sources of these obligations include not only federal, state and local laws, rules and regulations, but also industry standards, self-regulating organizations, and internal policies, procedures and control systems. The failure of institutions of higher education to meet this increasingly complex web of compliance obligations can have significant consequences - including administrative fines and penalties, suspension and disbarment from government programs, civil damages, criminal penalties, and general reputational harm. In recognition of these risks, Title 1, Article VI, Section 3 of the Handbook provides that the Board of Regents, through the Audit and Compliance Committee, shall (i) formulate an effective compliance function, (ii) provide centralized oversight of a program for compliance, (iii) review and evaluate compliance reports, and (iv) make recommendations as necessary for the correction of non-compliance. Therefore, the Board does hereby establish the following Compliance Department Charter setting forth policies and expectations with respect to compliance.

Section 2. Compliance Defined

Compliance means conforming to applicable federal, state, and local laws, rules, and regulations (sometimes referred to as “regulatory compliance”). Compliance also means and includes conformance with industry standards, self-regulating organizations, and internal policies, procedures and control systems (often referred to as “industry compliance”). Compliance also describes the awareness of, and efforts taken to ensure, regulatory and industry compliance. Compliance is an essential function of every institution, unit, and program of NSHE, and is a communal responsibility shared by all employees and stakeholders. The Board of Regents provides oversight of System and institutional compliance efforts and activities through the Audit and Compliance Committee.

Section 3. NSHE Compliance Department

The Compliance Department is hereby established as part of System Administration. The Compliance Department is responsible for the operation of the NSHE Compliance Program. The Compliance Department shall be administered by a Director of Compliance who shall report on functional matters to the Audit and Compliance Committee and on administrative matters to both the Chief Internal Auditor and the Vice Chancellor for Legal Affairs. Administrative matters include day-to-day management and supervision, technical direction, and performance evaluations.

Section 4. NSHE Compliance Program

Each institution has primary responsibility for ensuring compliance relative to its activities and for operating an effective compliance program that meets the needs and obligations of the institution. The NSHE Compliance Department supports and supplements institutional compliance efforts and is tasked with the following roles and responsibilities:

- 1. secondary (System level) oversight of institutional compliance efforts and programs;*
- 2. development of appropriate System level compliance policies, procedures and controls;*
- 3. provide technical assistance as necessary and facilitate the efficient utilization of compliance resources on a System wide basis;*
- 4. review and periodic audits of compliance controls to determine the effectiveness of System and institutional compliance programs;*
- 5. education and training on compliance issues and obligations;*
- 6. communication on compliance issues and risks including providing an independent reporting line through which System and institutional employees and stakeholders can report compliance concerns.*

Section 5. Annual NSHE Compliance Plan

1. The Director of Compliance shall, prior to the beginning of each fiscal year, prepare a plan detailing System and institution activities and areas that will be the focus of the NSHE Compliance Program for the upcoming year (each an “Annual Compliance Plan”). The Annual Compliance Plan will identify areas of potential or emerging compliance risk and identify priorities and goals for the NSHE Compliance Program in the upcoming year. The Annual Compliance Plan will be developed in consultation with the institutions.

2. The Annual Compliance Plan is subject to review and approval by the Audit and Compliance Committee. Amendments and significant deviations to the Annual Compliance Plan must be approved by the Audit and Compliance Committee. However, the NSHE Compliance Officer may conduct unscheduled compliance reviews of System and institution activities outside of the Annual Compliance Plan based on specific compliance concerns that he or she learns about or are otherwise brought to his or her attention.

Section 6. Institutional Compliance Program

Each institution or unit is responsible for compliance relating to its activities and endeavors and for establishing and maintaining an effective compliance program (each an “Institutional Compliance Program”). No particular form or structure is mandated, however, the following elements of an effective Institutional Compliance Program must be included:

- 1. integration of compliance considerations and controls into operational policies and procedures;*
- 2. periodic audits or reviews of compliance controls, policies and procedures, and development of corrective action plans, where necessary;*
- 3. compliance training and support provided in a manner that is appropriate and accessible;*
- 4. periodic risk assessments aimed at identifying areas of potential or emerging compliance risk;*
- 5. designation of individuals or committees to provide direction and support on compliance issues, where appropriate;*
- 6. processes that encourage institution employees and stakeholders to report compliance issues and that ensure non-retaliation for those who do so in good faith.*

Section 7. Medical and Healthcare Compliance

1. The healthcare industry is highly regulated and is subject to an increasing complex array of regulatory and industrial compliance obligations. Penalties for non-compliance can be severe and include exclusion of reimbursement from Medicare/Medicaid and private insurers. A robust compliance program is critically important in clinical practice activities in order to avoid erroneous billing and conflicts between patient care and business operations. Therefore, NSHE institutions, units and programs (including affiliated entities, programs, and practice plans) engaged in the clinical practice of medicine or allied healthcare must develop and maintain a written compliance plan for such activities (a “Healthcare Activity Compliance Plan”).

2. Each Healthcare Activity Compliance Plan shall address each of the elements described in Section 5 above and designate a person responsible for managing and administering the Healthcare Activity Compliance Plan (a “Healthcare Activity Compliance Officer”). In addition to any line of reporting that exists within the institution, the Healthcare Activity Compliance Officer shall also have a direct line of reporting to the institution President and the NSHE Director of Compliance in order to ensure independence, impartiality, and accountability.

3. Each Healthcare Compliance Plan is subject to review and must receive initial approval by the Audit and Compliance Committee. After initial approval by the Audit and Compliance Committee, a Healthcare Activity Compliance Plan may be amended or updated as necessary to conform to applicable compliance obligations, subject to review and approval by the NSHE Director of Compliance.

Section 8. NSHE Compliance Department Funding

1. The NSHE Compliance Department receives funding from a cost allocation model and is based upon the budget approved by the Chancellor and the Chair of the Audit and Compliance Committee. The cost allocation model shall be developed in consultation with the Business Officers Council and should reflect an allocation based on the activities and relative compliance risks of each institution, and the priorities and goals identified in the Annual Compliance Plan.

2. NSHE Compliance Department Funds shall be accounted for separately and are available for expenditure on compliance-related expenditures which include:

- a. salaries, wages and benefits for appropriate staffing of individuals directly employed in or providing services by the department;**
- b. operating expenses, including travel, directly related to the Compliance Department. This may include expenses that support the administration of the Compliance function (e.g. expenses related to office supplies, software program, membership dues, training and certifications);**
- d. equipment purchases directly related to the Compliance Department;**
- e. professional fees and expenses including consulting costs directly related to compliance activities;**
- f. transfers between NSHE institutions or budget areas for shared Compliance resources or programs.**

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