Healthcare General Counsel Report

Facts & Analysis

In Partnership with
Introduction

Healthcare General Counsel Report

The regulated nature of the healthcare industry makes for a complex system, which today’s legal executives must navigate carefully. Making the landscape even more complicated are the variety of other challenges that accompany business in any industry, including data privacy and finding the right talent to manage necessary work. From managing changes arising from the Affordable Care Act to HIPAA/HITECH compliance to protecting their systems from cyber attacks, General Counsel within healthcare must be able to count on a capable team of inside and outside counsel to ensure their hospitals and health systems are protected and able to provide the best value to patients across the nation.

Survey Structure & Methodology

Consero’s 2017 Healthcare General Counsel report, developed in partnership with Broad and Cassel LLP, was created in connection with Consero’s 2016 Healthcare General Counsel Forum for GCs from mid- to large-sized healthcare systems in the U.S. The survey reflects the participation of 54 General Counsel.
Priorities & Challenges

Data Privacy And Security Is The Top Risk Area For 75% Of Healthcare General Counsel

The top three priorities for healthcare general counsel in the months to come are regulatory management, data privacy and security, and compliance and ethics management. These priority areas was followed by M&A activity at 42%, which could mean high M&A activity in the healthcare industry in the year to come. Interestingly, all healthcare GCs report playing a role in M&A activity, with a substantial 86% of respondents identifying their level of involvement as “very involved.” Internal investigations may also take the focus of healthcare GCs in the year to come, with 86% reporting that they have conducted an internal investigation in the last 12 months.

On a related note, data privacy and security tops the list of items about which healthcare GCs seem to be most worried, with 75% of respondents naming it their top area of risk. This is unsurprising given the sensitive information health systems handle and the high probability of cyber attacks. Fifty-eight percent of healthcare GCs also consider the False Claims Act a top area of risk for their organizations, and 54% are concerned about HIPAA/HITECH compliance. Fortunately, a total of 71% of respondents are very confident (22%) or confident (49%) in their organization’s policies and procedures for meeting HIPAA/HITECH compliance. As for factors that may inhibit departmental effectiveness, 37% of healthcare GCs view access to budgetary issues as a main impediment, while 32% name regulatory compliance matters, which is in keeping with an across-the-board concern over regulatory matters.

Figure 1: What are your top areas of focus for the coming months? (Select all that apply.)

Figure 2: What are your top areas of risk? (Select all that apply.)
**Figure 3:** What do you foresee as the greatest impediment to the legal department’s success in the coming months?

- Access to budgetary resources: 37%
- Regulatory compliance matters: 32%
- Lack of buy-in from senior management: 13%
- Talent gap within the department: 12%
- Outside-inside counsel relationship: 6%

**Figure 4:** How involved are you in your organization’s M&A activity?

- Very involved: 86%
- Involved: 10%
- Somewhat involved: 4%
- Not involved: 0%
**Priorities & Challenges**

**Figure 5:** Have you conducted an internal investigation in the last 12 months?

![Survey results](image1)

Yes 86%

No 14%

**Figure 6:** How confident are you in your organization’s policies and procedures for meeting HIPAA/HITECH compliance requirements?

![Survey results](image2)

Very confident 22%

Confident 49%

Somewhat confident 21%

Not confident 8%
Close To A Third (32%) Of Healthcare GC Respondents Are Not Prepared To Handle A False Claims Act Complaint Successfully

It is of some concern that 53% of healthcare General Counsel do not believe that their emergency preparedness plan suitably covers risk exposure. Furthermore, 32% report that they do not have the proper policies and procedures in place to handle a False Claims Act complaint successfully, and an additional 53% do not believe that their organizations are prepared to handle the legal repercussions of a cybersecurity incident. This is particularly alarming given that 37% of healthcare General Counsel report that their organizations have experienced a cybersecurity breach in the last year. These data points indicate that there may be some room for improvement in the level of preparedness on the part of healthcare systems for certain areas legal executives consider to be high risk. Currently, 43% of Board members of healthcare systems surveyed are very involved in issues pertaining to cybersecurity or data privacy, and it is possible that level of involvement will increase in the year to come. On a separate topic, 40% of healthcare General Counsel report that their Board is very involved in quality of care matters.

**Figure 7:** Do you believe that your emergency preparedness plan covers risk exposure?

- Yes 47%
- No 53%

**Figure 8:** Do you have the proper policies and procedures in place to handle a False Claims Act complaint successfully?

- Yes 68%
- No 32%

**Figure 9:** Is your organization adequately prepared to handle the legal repercussions of a cyber security incident?

- Yes 53%
- No 47%
**Figure 10:** Has your organization experienced a cyber security breach in the last 12 months?

- Yes 37%
- No 63%

**Figure 11:** How involved are your Board members on matters relating to cyber security and privacy in your organization?

- Very involved 11%
- Involved 36%
- Somewhat involved 40%
- Not involved 13%

**Figure 12:** How involved are your Board members on matters relating to quality of care in your organization?

- Very involved 40%
- Involved 17%
- Somewhat involved 31%
- Not involved 12%
Healthcare General Counsel Are Satisfied With The Value Provided From Their Outside Counsel

For a combined 66% of healthcare General Counsel surveyed, most of their company’s legal work is conducted in-house. For the remaining work that is outsourced, they report that their outside counsel provide sufficient value relative to their spend, which is fortunate given that healthcare systems must rely on the expertise of outside counsel on a variety of matters. When characterizing the relationship between in-house healthcare GCs and external regulators, 26% of respondents view the relationship as very positive and 47% as positive.

Figure 13: Do you believe that your outside counsel provide sufficient value relative to your spend?

Figure 14: What percentage of your company’s legal work is conducted in house?

Figure 15: How would you describe your organization’s relationships with external regulators?
Lessons For The Industry

Healthcare General Counsel will be juggling a variety of different kinds of matters in 2017, from compliance management to data privacy to regulatory issues. In addition to managing a variety of priorities, this group of legal executives must work to decrease any exposure to risk that their healthcare systems may face—from cyber breaches to False Claim Act complaints. To ensure their departments and, ultimately, their organizations are in the best position to provide effective care to their patients, healthcare GCs will have to work closely with their in house and outside legal teams to decrease any gaps and meet all regulatory demands.

About Broad and Cassel LLP

Broad and Cassel LLP has built one of the most experienced and diversified Health Law Groups in the Southeastern United States. The firm has more lawyers certified in Health Law by the Florida Bar Board of Legal Specialization & Education than any other firm. Several of the firm’s health lawyers are certified by the Health Care Compliance Association in Health Care Compliance and are Certified Dispute Resolvers with the American Health Lawyers Association.

More information on future events as well as industry and attorney news can be found on Broad and Cassel LLP’s Health Law Blog at http://www.healthlawfla.com or on Twitter at http://www.twitter.com/healthlawfla.

About Consero

Founded in 2010, Consero Group is an international leader in creating function-specific events for senior-level executives in industries that include Legal, Compliance, Brand Protection, Customer Experience, HR and Procurement, among others. Based in Bethesda, Maryland, Consero is best known for transforming the executive experience through intimate, invitation-only programs in a sophisticated learning environment with high-level content. For more information on Consero, please visit www.consero.com.

Opportunities To Participate

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UPCOMING EVENT

Healthcare General Counsel Forum

October 22–24, 2017
Lakeway Resort & Spa, Austin, TX