

KEEP THEM TALKING TO YOU: A CULTURE OF TRUST AND INTEGRITY IMPROVES QUALITY, SAFETY AND ORGANIZATIONAL OUTCOMES

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9:00 AM – 12:00PM

KEY COMPONENTS OF COMPLIANCE PROGRAM

- Responsibility of the program assigned to a high level official and a designated Compliance Officer:
 - These must be individuals who can report directly to the Board of Directors as needed.
- Standards established that clearly define expected ethical behavior that all who work at and for the organization must follow.
 - Code of Conduct
 - Policies and Procedures

KEY COMPONENTS (CONT'D)

- Monitor and Audit high risk areas:
 - Assure corrective action is taken whenever we do not meet the standards/regulation/expectation
 - This includes plans of improvement, billing corrections, re-education etc.
- Develop disciplinary guidelines to use for those who do not follow the standards:
 - Discipline may include anything from re-education up to termination

KEY COMPONENTS (CONT'D)

- Education and Training are essential to assure that everyone who works here understands our standards and knows the regulations that affect to their job:
 - This includes orientation and on going education.
- Communication is essential to assure that all who work for our organization are knowledgeable about the avenues they have to report compliance related issues.
 - In person communication is always best but we also have a system for anonymous reporting.
- Evaluation of the program on an annual basis to assure that the program is effective.

PROGRAM GOALS

- Creating a culture of compliance
 - Zero tolerance may not be best route
- Training
 - Effectiveness
 - Targeted
- Hotline
 - Accessibility
 - Anonymity



UNDERLYING THEME?



LEGAL PARAMETERS



How to encourage reporting by way of non-retaliation policy, while also maintaining compliance?

WHY INVESTIGATE A COMPLAINT?



COMPLAINT CHANNELS FOR EMPLOYEES

- Establish well-publicized, readily accessible complaint procedures.

- Establish multiple avenues/individuals to whom employees can report complaints.
 - Minimizes discomfort in reporting complaints.
 - Minimizes later arguments by that failure to report arose from fear of retaliation.

COMPLAINT CHANNELS FOR EMPLOYEES (CONT'D)

- Consider anonymous reporting procedures.
- Experts will critique policies:
 - Clear explanation of prohibited conduct;
 - Assurance of no retaliation;
 - Assurance of immediate/corrective action.

NON-COOPERATIVE COMPLAINANT, WRONGDOER, OR WITNESS?

- Remind of the obligation to cooperate; failure to do so may result in potential discipline.
- Refusal to cooperate may impugn credibility, or inference of wrongdoing.
- Confirm no retaliation policy.
- Confirm refusal to cooperate and disclosure of consequences of failure to cooperate.



WHAT TRIGGERS A DUTY TO INVESTIGATE?

WHEN MUST YOU INVESTIGATE?

- Former Employee Complains? YES
- Attorney for former employee sends settlement demand? YES
- Designated person receives complaint? YES

EMPLOYEES WHO ASK EMPLOYER NOT TO RESPOND TO COMPLAINT

- Once employee complains:
 - employer must take prompt, reasonable, preventative and corrective action.
 - employee relinquishes control over the employer's response.

CONDUCTING THE INVESTIGATION



CONDUCTING THE INVESTIGATION

- Respond promptly to a complaint.
- Take immediate remedial measures, if appropriate.

**CONDUCTING THE INVESTIGATION
(CONT'D)**

- "Preserve Evidence" when complaint is received.
- Outline Policy Issues; Structure Interviews.
- Be fair and impartial during investigation.
- Make your best judgment about policy violation (not legal conclusion).
- Communicate outcome to affected employees (at a minimum the complainant and the alleged wrongdoer).

**PROBLEM ISSUE: REFUSAL TO
INTERVIEW WITHOUT ATTORNEY**

- Advise employee that attorney may become a witness and cannot interfere with investigation or interview.
- Refusing to allow attorney may affect perception of "reasonable investigation".
- Reassess who should do the interview.

WHAT CONSTITUTES A THOROUGH INVESTIGATION?

Thorough: Tailor to circumstances.

- Identify issues and interview all relevant witnesses.
 - Complainant and alleged wrongdoer.
 - Witnesses identified by complainant and alleged wrongdoer.
 - Employees in relevant work group.

WHAT CONSTITUTES A THOROUGH INVESTIGATION? (CONT'D)

- Identify and gather relevant documents.
- Confirm training; attendance logs.
- Survey workplace.
- Watch the alleged wrongdoer.
- Form conclusions in view of POLICIES.
- Suggest remedial measures.

WHAT CONSTITUTES A THOROUGH INVESTIGATION? (CONT'D)

Not Thorough:

- Interviewing only complainant and alleged wrongdoer.
- Not interviewing those people listed by complainant or alleged wrongdoer.

WHAT CONSTITUTES A THOROUGH INVESTIGATION? (CONT'D)

- Consider witness interviews AND review relevant documents.
- **Form conclusions** re: policy violations: *“corroborated,” “unfounded,” “inconclusive with training.”*
- Always suggest remedial measures. Even if inconclusive it can be a learning opportunity.

WHAT CONSTITUTES A THOROUGH INVESTIGATION? (CONT'D)

- **KEEP AN ACCURATE, PRESENTABLE RECORD** – don’t let the passage of time dilute the thoroughness of the investigation.



WHAT TO DOCUMENT

- Witness/Documents Investigation Log.
- Witness Disclosure Forms.
- Documents reviewed.
- Conclusions.
- Remedial Measures.
- FINAL: Integrated, stand alone document summarizing all of the above.

BEST PRACTICES FOR DOCUMENTING INTERVIEWS

- Date/time/individuals present.
- Length of interviews.
- Confirm Opening/Closing Statement.
 - instructions to witnesses, i.e., truthful cooperation, non-retaliation.
 - why they are being interviewed.
- Ask for corroborating or contradictory evidence, notes, records, etc.

BEST PRACTICES FOR DOCUMENTING INTERVIEWS (CONT'D)

- Include supportable observations about witnesses such as:
 - Demeanor – how did they appear/physical.
 - Credibility – why credible or not credible.

BEST PRACTICES FOR DOCUMENTING INTERVIEWS (CONT'D)

- Interview notes should not include:
 - Speculative statements
 - Generalizations
 - Irrelevant information "floosy" "Communist"
 - Editorial comments that may indicate not neutral
 - Legal conclusions

COLLECTING DOCUMENTS

- Personnel files.
- Emails.
- Surveillance video/Attendance records.
- Training/handbook documentation.
- Phone records (anonymous complaint line records).
- Expense account records.

WORST INVESTIGATORY PRACTICES

- Poor documentation—Unclear Context.
- Notes with conclusory/irrelevant information.
- Ignoring damaging information.
- No remedial measures because results are inconclusive.
- Discouraging reporting to governmental agency.

TAKING APPROPRIATE REMEDIAL ACTION

- Prompt remedial action must be adequately remedial and effective.
- Action proportionate to the seriousness and frequency of the harassment.

REASONABLE REMEDIAL ACTION

- Training.
- Counseling.
- Dissemination of policy.
- Oral or written warnings.
- Demotion.
- Discharge.
- Consider discipline/remedial measures for those other than wrongdoer (supervisor who failed to catch issue).

BARRIERS TO A SUCCESSFUL COMPLIANCE PROGRAM



BARRIERS/CHALLENGES

- One of the seven elements of an effective Compliance Program is to develop **effective lines of communication**.
- For most healthcare organizations, effective lines of communication entail multiple venues, allowing both employees and non-employees, to reach the Compliance Officer/Department at all times to report suspected noncompliance with the Code of Conduct, policies and procedures, laws and regulations.
- To help promote and encourage individuals to contact the Compliance Department, most healthcare organizations have a third party company manage a 1-800 number where people can call in and report anonymously.
- Even with the availability to remain anonymous, what barriers do Compliance Programs face to promote trust and integrity to improve reporting and decrease misconduct?

PHYSICAL & CULTURAL BARRIERS

- Putting a face to Compliance.
- Establishing credibility with the caller.
- Changing perception that Compliance is the “bad guy”.
- Making Compliance part of the “team”.
- Finding/achieving the balance of employees respecting Compliance but not fearing Compliance.
- Engaging Departmental leaders with investigations.
- Ensuring individuals continue to call their concerns into the hotline.
- Assuring accessibility to compliance reporting resources.

INDIVIDUAL BARRIERS

- Preventing both unintentional and intentional “retaliation” against someone who called in the hotline, for example:
 - Unintentionally revealing the caller’s identity throughout the course of the investigation causing their coworkers or manager to treat them differently.
 - Ensuring that post investigation the employee who called the hotline is not treated differently.
 - Being required to discipline the caller because of information discovered in the investigation (or due to the caller’s own admission) and the caller feeling retaliated against.

“TONE AT THE TOP” BARRIERS

- Ensuring that the message of Compliance, ethics, etc. gets from the top down.
 - Obtaining “buy in” at the highest level.
 - Does the Board and Executive team receive the latest compliance information? (And absorb it).
 - Ensuring that the message isn’t inadvertently lost or changed as it goes through multiple layers.
 - Visibility of enforcement efforts while not conflicting with risk management strategy.
 - As leaders, don’t forget to reward or acknowledge the good compliance “stuff” happening everyday.

INVESTIGATION BARRIERS

- Setting realistic expectations with the caller.
- How can Compliance provide assurance to a hotline caller that their issue will be reviewed and responded to while at the same time not promising an outcome prior to obtaining the facts?
- Conducting an investigation with extremely broad and/or vague allegations.
- Conducting anonymous investigations.
- Conducting an investigation when the caller requests to remain anonymous.
 - Can honoring anonymity become a barrier to initiating an investigation? Can honoring anonymity not always be honored?
- Misuse of the hotline – reporting a facially legitimate complaint against an employee that is actually false.



RESOURCE BARRIERS

- Challenged by fewer compliance resources/personnel in smaller organizations.
- “Multiples hats” worn by compliance personnel dilutes effectiveness.
- Conflicts arise when compliance personnel become “operations”.
- Employees less inclined to report an issue if from small organization.
- Delays lead to poor perceptions of the compliance program.
- Lack of resources prevents “proactive” compliance program.
- Poor visibility of the compliance program promotes fear and lack of trust (only come around when something is wrong!).

ADDITIONAL BARRIERS

- Perceptual
- Language Barriers
 - Jargon
 - Contextual Meaning
 - Insensitive/Discriminatory
- Physiological Barriers
 - Hunger
 - Fatigue
 - Emotional Distress
- Psychological Barriers
 - Negativity
 - Boredom
 - External pressures



BREAKING DOWN THE BARRIERS

- Discuss how to break down the barriers; questions to ask; actions to take.



COMMUNICATION

What's Your Style....



HOW EFFECTIVE IS YOUR COMMUNICATION?

Who is the Compliance Officer's Audience?

- Board Members
- Executive Management Team
- Legal Counsel
- Risk Management
- Field staff
- Patients/Residents/Tenants
- Government Investigators
- External Auditors
- Family Members
- Complainant

How does the compliance officer prioritize?



HOW EFFECTIVE IS YOUR COMMUNICATION? (CONT'D)

When is the Compliance Officer the Audience?

- Hotline Complaints
- Reports of Policy Violations
- Fielding questions from employees/customers/public
- First Contact for Government Investigators/Oversight
- Co-worker uses Compliance Officer as "sounding board" or for "venting"
- Trusted advisor in an organization
- Serves as mentor



How should the compliance officer respond?

BOOSTING COMPLIANCE COMMUNICATION EFFECTIVENESS

- Are you depending on "e-learning" as the only mode of communication to employees or other stakeholders?
- What communication channels do you currently use?
- What communication channels are you potentially overlooking?
 - Kiosks
 - Monthly Staff Meetings
 - Bulletin Boards
 - Newsletters, Blogs or other internal publications
 - Other?

BOOSTING THE COMPLIANCE MESSAGE

- Does your communication appeal to all learning styles?
 - Visual
 - Auditory
 - Reader/Writer, and
 - Kinesthetic
- How long is your message?
 - Once a year for 30 or 40 minutes vs. 6 times a year for 5-8 minutes
 - Compelling, to the point, and reinforce previous messages

BOOSTING THE COMPLIANCE MESSAGE (CONT'D)

- Presenting information for positive change by presenting the negative outcomes of non-compliance vs. the positive outcomes of compliance
- Repetition affects change
 - Focus on a change in behavior, not just a change in what employees know
- Recognize that others see things differently
- Get feedback
- Speak face to face whenever possible
- Use language that fits the audience
- Have integrity and honesty in communications
- Make your communication like a conversation
 - Clarity and Brevity

HYPOTHETICAL # 1

An employee notifies a Compliance Officer of perceived unethical billing practices of a regional leader. The compliance Officer listens to the employee and assures the employee that the concern will be fully investigated. Weeks pass and the employee hears nothing about the investigation nor does she observe any changes in the regional leader's business practices. The employee is concerned about what actions the Compliance Officer/company has taken. The employee reaches out to the Compliance Officer and inquires where the company is with the investigation. The Compliance Officer knows that they have been diligently investigating but (1) isn't sure what she should/can disclose to the employee; (2) knows that there is no actual evidence of unethical billing practices; and (3) that the regional leader is a "high performer" within the company and that without actual evidence, no corrective action will be taken.

HYPOTHETICAL # 2

Medicare Home Health requires as a condition of payment a face to face meeting between the treating physician/nurse practitioner and patient in order to determine that home health is appropriate. Thereafter, the practitioner must provide a written narrative on a specific form, identifying the need for home health, and must sign that form.

These forms are frequently filled out in a skilled nursing facility when discharging a resident – many times they will require home health services in order to permit safe discharge.

A social worker fills out the approval form and readies it for the practitioner's signature, however, she cannot locate the practitioner to get his or her signature. In order to not delay the resident's discharge and to speed the arrangement for home health services, the social worker decides to create blank "forms" with various treating practitioners' signatures on the forms so she can use them instead of finding the appropriate practitioner before discharging the resident.

HYPOTHETICAL # 2(CONT'D)

Some months later, the social worker quits and is responsible for hiring her replacement, who she trains to perform the home health approval process in the way she had been doing it – by using the copied "pre-signed" forms. Her replacement, who is a nurse by trade, doesn't feel that using the "pre-signed" form is correct and asks the social worker department supervisor if this is how the process is supposed to be completed. The supervisor assures her that this is the way they have done it for several years and when you cannot find the treating practitioner to sign the form, you should just use the "pre-signed" form instead.

Not wanting to be a tattle tale on her first weeks on the job, the new social worker declines to report her concern to the Compliance Officer and there is no hotline at her facility.

Years later the facility is audited and the mistakes uncovered. The facility has called to ask you how to handle the situation including whether to terminate the social worker who questioned the practice, but failed to report it to the Compliance Officer.

HYPOTHETICAL # 3

Nurses at a skilled nursing facility staff self-segregates into cliques along racial lines. Both white nurses and black nurses are engaging in a medication-diverting scheme. White nurse learns that a black nurse is stealing a resident's oxytocin and calls the hotline and reports it.

An investigation is conducted during which all of the nurses who work with the alleged wrongdoer are interviewed. None of the black nurses report having seen or being aware of the wrongdoer stealing oxytocin, which is incorrect. Moreover, none of the white nurses reporting or having seen or being aware of anyone else (like their white counterparts) stealing oxytocin, which is also incorrect. White nurses who have personal knowledge of the wrongdoer's actions reveal it in the interviews, but do not inaccurately report knowledge of misconduct.

It is later revealed during a medication audit that several of the white nurses and several of the black nurses are stealing oxytocin and you suspect that several of their coworkers were aware of the practice at the time of the investigation

The facility has called to ask how to handle the situation.

HYPOTHETICAL # 4

Employee ("Caller") uses the compliance hotline to report a "Compliance" concern. The Caller speaks directly with a member of the Compliance department and is cooperative and responsive to a number of interview questions. The caller asks to remain anonymous. However, the Caller demands immediate action be taken or he/she will contact other authorities (for example, the State Survey Agency). The Compliance department representative seeks the "who, what, when and where" details from the Caller to determine the nature of the "Compliance" concern(s). During the course of the call, Caller alleges multiple issues related to quality of care, HIPAA violation and harassment/discrimination by co-workers. Caller also accuses the facility leadership of ignoring past complaints from staff or being the cause of the complaints. The Caller adds that he/she is calling "on behalf of many other staff members who are fed up and ready to quit". Most of the reported matters are alleged to have occurred weeks or months ago.

Prior to ending the call, the Caller states that he/she is fearful of retaliation from his/her supervisor for calling the compliance hotline. The Caller adds that he/she is aware of others from this facility that contacted the compliance hotline and were terminated as a result of their call. Caller is unwilling to provide details of those prior instances.

HYPOTHETICAL # 5

Important characteristics of Compliance Officers and Compliance staff should include trustworthiness, integrity and respect for confidentiality. Often times close working relationships lead to the sharing of a number of topics with colleagues. Compliance team members can be viewed as a resource to "bounce things off". They can also be a sounding board for personnel, including high-level leaders, to "vent" frustrations about colleagues or discuss potential wrongdoing.

The challenge for the Compliance Officer is to maintain a respectful and fair relationship with all levels of personnel while remaining true to the duties owed to the organization. While there is a challenge some times to keep people talking, there may also be a challenge when people talk too much. When does a Compliance Officer have a duty to inform a colleague that "venting" has moved to an actionable compliance matter that must be investigated? Much like the anonymous hotline caller, the Compliance Officer may be faced with having the knowledge of a potential compliance matter that deserves investigation yet the reporter requests nothing be done.

HYPOTHETICAL # 6

The Organization conducts an audit of in-house therapy services under Medicare Part B. The audit identifies a 58% error rate over a 3 year period. The Director of Therapy Services has been in place for 10 years and a review of the direct therapy staff indicates that there have not been any staffing changes for the last 8 years. The Compliance Officer does an investigation to determine the underlying issues and the scope of the potential repayment. In an interview, a therapist states that they had stopped getting certifications signed by the physicians about 3 years ago because the physicians were complaining about too much paperwork and so they had just stopped the process without knowledge of management. Other contributing factors include that there has not been a process to monitor and audit therapy documentation on a regular basis since and there was not a triple check process in place prior to billing.

HYPOTHETICAL # 6 (CONT'D)

It was established through interviews that staff were aware that this practice was not acceptable however, they did not feel an obligation to report this to management, the Compliance Officer or the hotline.

The Compliance Officer has recommended to Senior Leadership that disciplinary action should be taken for the therapist who had stopped obtaining the physician documentation and for the Director or Therapy Services. Senior Leadership is balking at these recommendations for fear of upsetting long-term employees. The Compliance Officer is concerned about the credibility of the Compliance program if no actions are taken to address the actions or lack of actions of the staff.

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