Overcoming Management Pushback to Achieve Compliance

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• 30 years of diversified healthcare management, operations and compliance experience
• Former SVP, chief of ethics and compliance officer at UMDNJ
  o Credited with re-engineering the compliance program of the nation’s largest free-standing public health sciences university
  o Successfully led the compliance program to adhere to CIA with DHHS/OIG that occurred following a Deferred Prosecution Agreement
• Chief Compliance and Privacy officer at Deborah Heart and Lung Center
  o Three-year CIA, first settlement of Voluntary Disclosure Protocol
  o Compliance program recognized by HCCA as a “Best Practice”
• Author of Compliance Officer’s Handbook
Michael P. McKeever, CPA, CHC, CHRC, FHFMA

- Director, Internal Audit – Saint Peter’s Healthcare System
- Over 30 years healthcare experience
  - Compliance
  - Internal Audit
  - Finance
- President Elect – NJ HFMA

The Goal(s)

- To establish and maintain an effective compliance program
- To be able to prove, if need be, that your compliance program is effective
How Best to Mitigate and Minimize Risk via the Compliance Program

Main tenets:

- Compliance needs to be pro-active and not reactive
- Instill in your organizational culture that compliance is an investment and not an expense
- Don’t lose sight of your “blocking and tackling”

The Task

- To establish the 7 elements of an effective compliance program in a complex organization that has an ingrained management structure that may be resistant to change...
What Does a CCO Need?

- Independence
- Access to the board
- Authority and respect
- An appropriate budget
  - FTEs, consultants, technology, audits
- Knowledge
- Information
  - Measurement
- HIPAA / IT Security Support

What Does a CCO Need? (Continued)

- Tone at the top
  - Proactive or reactive?
  - Expense or an investment?
- Ability to constantly educate
- Tap into a network of outside resources
- Someone to talk to when times get tough
- Validation of your efforts
- Intangibles
- Thick skin
They say a Culture of Compliance starts with the tone at the top…

But what exactly is “the top”?

Compliance 101 – the 7 Elements

1. Designate a Compliance Officer and establish a Compliance Committee
2. Implement written policies and procedures
3. Conduct effective compliance training
4. Develop effective lines of communication
5. Internal monitoring
6. Enforce disciplinary guidelines
7. Rapid response and corrective action
Why Would You Take Sights Off of the Seven Elements?

- CCO experience of when things have the potential to “Go South” on your compliance program:
  - Pressure exerted upon doing compliance the right way
  - Haven’t sold and resold the program
  - Haven’t developed appropriate relationship with General Counsel
  - Haven’t developed appropriate compliance oversight with CEO, COO, CFO, Chair of Board, Chair of Audit Committee
  - Don’t have the necessary resources/budget
  - Don’t have authority to have healthy conflict based discussions
  - Surrounded by leaders that display “situational compliance”

Compliance Officer & Committee

- The Compliance Officer should:
  - Report to the CEO and Board
  - Be a member of Senior Management Team
  - Have limited other duties
- The Compliance Committee should:
  - Operate under defined charter
  - Report activities to Board
  - Maintain comprehensive minutes of all meetings and investigations
  - Approve Annual Work Plan
  - Support the Compliance Officer
Compliance Committee (continued)

- Makeup of the Committee:
  - Senior Leadership
  - Operational Leaders
  - Include Medical Staff
  - Corporate Staff
  - Hybrid

- Structure of the entity should influence Compliance Committee composition

And Now – Possible Pitfalls

- Resistance to adding additional member to Senior Leadership Team
  - Current makeup of the team
  - Single purpose member
  - Concerns about overlap of purpose/authority
  - Personalities

- Entity is top heavy with committees
  - Available time of members
  - Are committees effective?
Recent NJ Survey

- 50% of Compliance Officers were also responsible for the Internal Audit function
- 53% were also the Chief Privacy Office
- 19% were responsible for Risk Management
- 44% had other duties, including:
  - Legal
  - Ethics and Investigations
  - Security
  - Accreditation and Licensure

Policies and Procedures

- Is there a formal process for creating, approving and publishing policies?
  - Comparison to existing similar policies
  - How are covered individuals notified of policies
    - Employees
    - Medical Staff
    - Independent contractors
- Define expectations for implementing policies responding to identified gaps
Possible Pitfalls

- No formalized process related to policies
- Policy overlap
- Where to create, where to amend
- Referencing existing policies
- Where do your compliance policies live?
- GAP Assessment & Ownership

NJ Experience

- 81% of respondents said that all policies are available on the intranet
- Approval of Compliance policies:
  - 69% initially approved by the Compliance Committee
  - 50% also approved by Board Compliance Committee
- 88% of respondents routinely review and update policies in response to formal risk assessment
Training and Education

- Methods – in person or online
- Topics covered
  - If under CIA, probably defined
  - If not, how granular should you get?
  - Updating content
- Frequency
  - Once again, if under CIA, it will be defined
  - Otherwise, how often is necessary to maintain visibility/effectiveness?

Once Again, Possible Pitfalls

- If included as part of annual comprehensive training, is your message getting through?
- Employees just “clicking through the slides”
- Does testing really help?
- Do you need specialized training for specific jobs/categories?
- There are advantages to in person training
How much compliance education is enough?
Follow DHHS OIG CIA requirement or establish your own expectations?
  o Have Board support.
Establish standard for different groups – “I like the following:”
  o Staff except housekeeping and food service – 1 hour annually.
  o Executives – 2 hours annually.
  o Physicians – 2 hours annually.
  o Board – 2 hours annually.
  o “Exception – those involved in negotiating physician or referral arrangements 2 hours plus specific training on Stark and Anti-Kickback Statute by an expert…”
Can your organization tolerate this?
  o Answer will tell you about your compliance culture.

NJ, again...
90% of respondents provide compliance education as part of new employee orientation and annually
56% provide some in person training
94% incorporate online training
25% include compliance training in educational fairs
NJ (continued)

- 60 minutes of annual training was the norm, at 44%
- Standard training includes:
  - Code of conduct, Conflict of Interest, False Claims Act, HIPPA, Confidential Reporting, Organizational Policies and Procedures
- Focused training also provided

Lines of Communication

- Besides the hotline, are there other complimentary methods?
- Direct employee contact
- Tracking utilization
  - All issues presented or only those originating from the hotline?
  - Trends Year to Year
Pitfalls

- Other incident reporting systems
  - Patient care issues
  - Safety and security
- Promotional efforts
- Being viewed as gatekeeper for all reported issues

The Survey Says...

- 69% use emails and the intranet to promote the Compliance Program, 53% use Posters and Newsletters
- Annual Hotline calls per 1,000 employees:
  - 0 to 10 – 59%
  - 11 to 20 – 25%
  - Over 20 – 16%
Internal Monitoring

- Risk assessment
  - Formal process?
  - ERM
- Compliance work plan
  - Updated annually?
  - Approval process
- Departmental monitors
  - Key risk areas

Internal Monitoring (continued)

- Where are the results reported
  - Compliance Committee
  - Senior Leadership
  - Board
- Use of external resources
  - Selected projects
  - Provides enhanced expertise
- Reactive Reviews
Pitfalls

- Time and resources to address workload
- Training staff to perform monitoring
- Reluctance of line managers to provide staff to perform ongoing monitoring

Survey Results

- 88% of respondents use a risk based assessment in developing work plan
- Key inputs to risk assessment:
  - External regulatory notices (OIG) – 88%
  - Regulatory changes – 72%
  - Interviews with leadership – 69%
  - Compliance Committee – 66%
  - Data mining/analytics – 31%
  - Payer denials – 28%
Enforcing Disciplinary Guidelines

- No need to reinvent the wheel
- Disciplinary actions need to be consistent
  - Similar infractions
  - Across employee types
- HR should be your business partner
  - You can make recommendations, but don’t insist!

Pitfalls

- Concerns from other Senior Leaders that the Compliance Program has overstepped its bounds
  - No one can be an expert in everything
  - Timely and complete handoff of identified issues
  - Follow up that issue has been addressed
  - Close out hotline issues
Corrective Action

- Address issue identified and move forward vs. full disclosure
  - CMS and OIG Voluntary Disclosure protocols
    - Quick and complete evaluation prior to deciding
    - Senior Leadership support is essential
  - Dynamic changes if operating under a CIA, where disclosure is required by agreement

Corrective Action (continued)

- 60 day rule
  - Limited scope reviews are more manageable
  - Use a statistically valid random sample in limited circumstances only

- Maintain oversight role, don’t become operational!
- Don’t forget to test corrective actions implemented!
Pitfalls

- Full disclosure could be time consuming and expensive
- Meeting the requirements of the 60 day rule
- Natural tendency to look to Compliance for corrective action plans
- What do you do when the corrective action plan proves ineffective?

The NJ Experience

- How do you ensure accountability?
  - 69% perform follow up reviews with the results reported to Senior Leadership and/or the Board
  - 18% incorporate implementation of corrective action plans in management performance appraisals
  - 3% reported not tracking corrective action plans
Summary Discussion – Where Might There Be “Pushback to these efforts?”

- Hotline Calls
- Education and Policy / Procedures
- Audit/Monitoring
- Potential Areas of Trending Your Coding, Billing Results
- Budget Analytics
- Annual Audit Work Plan Completion
- Audit Benchmarking Scorecard
- Other Data Points to Trend by Year
  - Physician arrangements
  - Survey results

Questions?