NEXT GENERATION COMPLIANCE: HOW METRICS SHOULD DRIVE YOUR COMPLIANCE AND ETHICS PROGRAM

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Overview

- The Compliance & Ethics challenge
- Why metrics matter
- Metrics Fundamentals
- Healthcare related compliance metrics
Challenge

Ethics perception: ______________________

Ethics reality

- Cheating
- Stealing
- Resumes
- Reporting
- Character/competence assessment

Challenge

Ethics reality, cont.

- Aggressive enforcement climate
- Fraud
- Abuse
- Embezzlement
- Culture/tone at the top
- Controls
Challenge

Business activities outside normal control processes
- Separate entities
- Medical staff accounts
- Inadequate segregation of duties

Management pressure areas
- Financial performance
- Overtime
- Meal/break period penalties
- Productivity
- Quality

Challenge

Communication
- Sloppy, inappropriate emails, memos, letters, voicemails, telephone conversations, etc.
- Your statements/words/communications will be used against you in enforcement actions!

Complexity
- Health care is the most complex, highly regulated segment of the U.S. economy
- Mayo Clinic CEO (2002): more than 200,000 pages of laws, regulations, standards, etc.
- Complex, confusing and counterintuitive laws and rules
- Thousands of material changes each year
Why metrics matter

• Meet FSG requirements
• Align Incentives (incentives are skewed)
  ➢ performance evaluation
  ➢ pay increases
  ➢ promotional opportunities
  ➢ transparent reporting
• Measure progress
• Meet management and board expectations
• Demonstrate effectiveness/value
  ➢ Management
  ➢ Board
  ➢ Regulators/enforcement

Metric Fundamentals

• Relevant/Important
• Fair/Reasonable
  ➢ right person
  ➢ right measure
  ➢ gradually implemented
• Objectively measurable
• Not easily manipulated
• Don’t create perverse incentives
• Appropriately utilized

Two Types of Metrics
• Compliance program operations (structural)
• Substantive (risk related)
Metric application

- Employees
- Management
- Business unit leader

Remember: It’s management’s job to implement the program and ensure compliance. The role of the compliance officer is to ensure management knows what it needs to do and is consistently and effectively executing.

Compliance foundations — specific, measurable objectives

Structural (program operation)

- P&Ps — orientation to program and P&Ps, development or review of P&Ps, adherence to P&Ps
- High-level oversight — Board oversight, senior management participation in meetings, audit exit conferences, compliance meetings, compliance officer member of senior management, etc.
- Education — completion of compliance and ethics education, completion of job-specific education programs, ethics scenario discussions in staff meetings, etc.
- Screening — background checks, exclusion checks
Compliance foundations — specific, measurable objectives

Structural (program operation), cont.

- Investigation/reporting — documentation of employee complaints and hotline calls, prompt investigation and response to complaints/hotline calls

- Monitoring/auditing — completion of audit/monitoring activities, scores on audits (accuracy of process), completion of reports, tracking and submission of data, etc.

- Remediation — correction of identified mistakes (refunds, data/reporting errors, etc.), completion of corrective action plans (P&P development/modification, implementation of new/different control processes, monitoring, training*, etc.)

*Most education does not change behavior. Education remediates issues only if it is accompanied by improved control processes.

Compliance foundations

Substantive

- General: tax, FLSA, environmental, antitrust, etc.

- Health care specific: anti-kickback, Stark, false claim (including documentation, medical necessity, patient status, coding and billing, quality of care standards), COPs, licensure and certification, privacy, data security, DEA, tax-exemption, charity care (501(r), lobbying and political activity

Tip: Develop a compliance scorecard for key business unit department executives that addresses structural and key substantive risks. These objectives must be specific, objectively measurable and will be most effective if they have a material impact on the performance evaluation and/or incentive compensation process. See attached example.