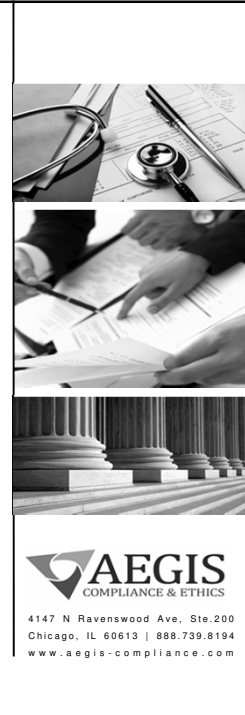


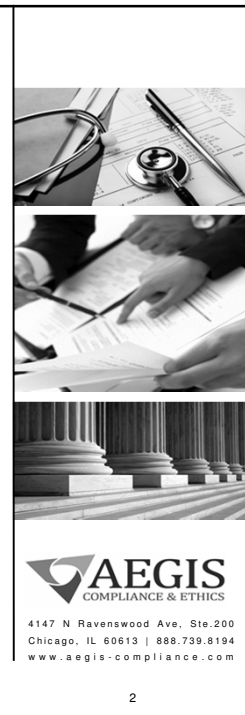
# Moving Your Compliance Program from Check the Box to Strategic

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Help us evaluate our compliance program.  
What do we need to do to be successful?

- What is the strategy for your Compliance Program?



## Help us evaluate our compliance program. What do we need to do to be successful?

- Your Compliance Program budget is \$xxx.xx. What are you hoping to accomplish by spending the budgeted funds?
- You've been asked to explain your compliance officer's role to him/her in three sentences or less. What will you tell the compliance officer?



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## How did they answer?

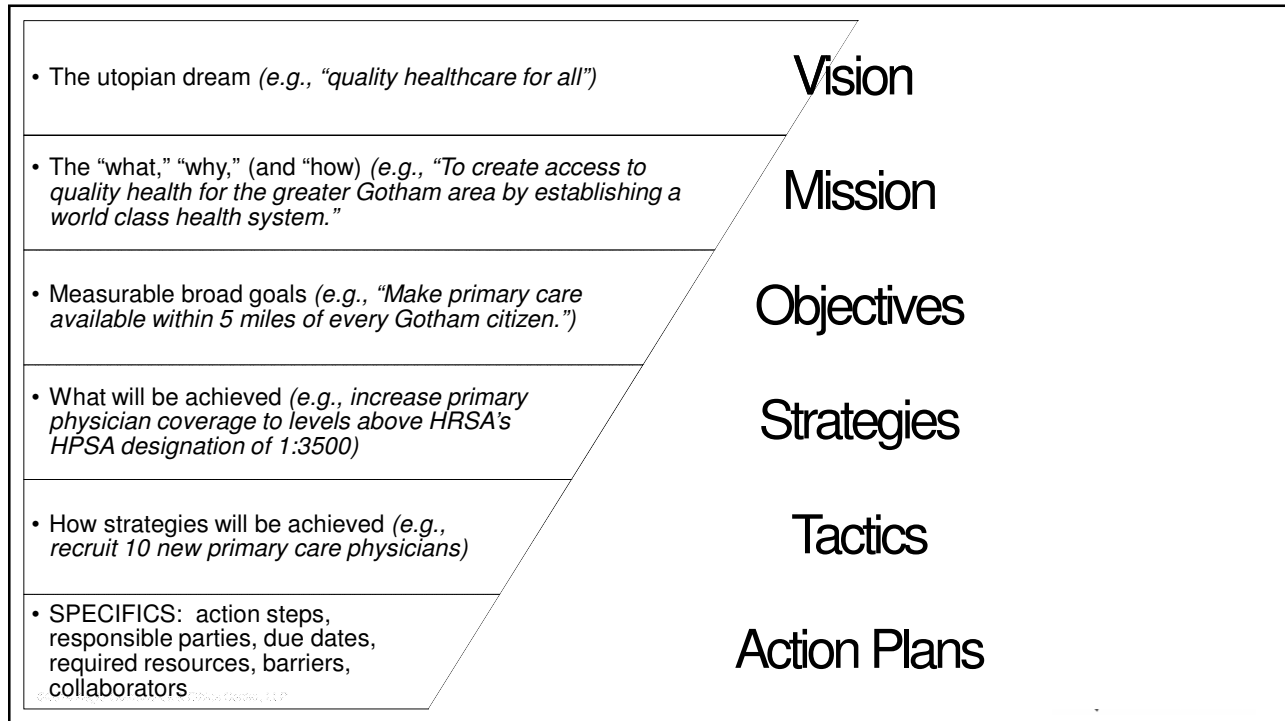
- I don't know
- No one has ever asked us to think about compliance in that way
- Make sure we are "in compliance"
- Keep me out of jail




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## What are the appropriate strategies for a compliance program?





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## What are the appropriate strategies for a compliance program?

- Prevention
- Detection and Correction
- Defense



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## Proactive vs. Reactive Compliance

*"It is important here to distinguish between 'backward looking' and 'forward looking' compliance efforts. I do not mean that we are now willing to credit 'backward looking' compliance efforts—preexisting compliance programs that fail to deter or detect the illegal cartel conduct . . . a compliance program that fails to deter or detect cartel behavior cannot qualify for that credit . . . I also do not mean that we are going to credit companies that, after coming under investigation, put into place or nominally improve an antitrust compliance program.*

\*\*\*

*"Only compliance efforts that go further, that reflect in some way genuine efforts to change a company's culture, will receive consideration in calculating a company's fine."*


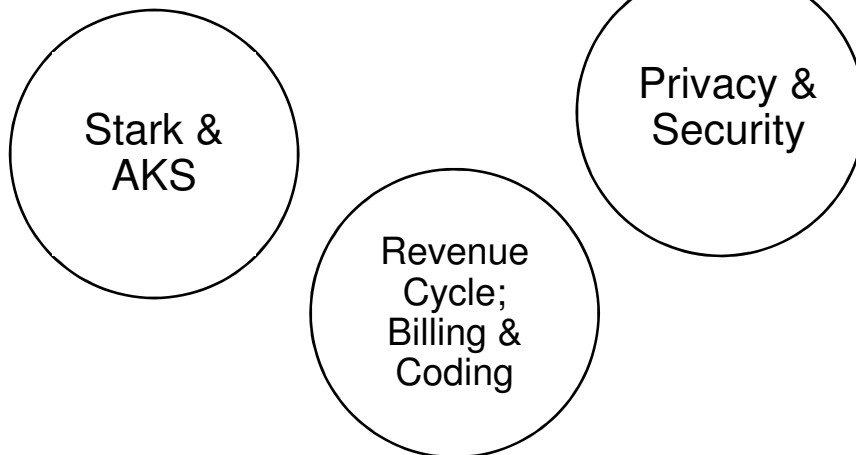
Deputy Assistant Attorney General, Antitrust Division, Brent Snyder comments to the Sixth Annual Chicago Forum on International Antitrust, June 2016



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## What are the appropriate strategies for a compliance program?



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## What does a comprehensive, well designed program look like in the health care industry?

### Revenue Cycle Risk Areas – Focus of OIG OAS Hospital Compliance Audits

- Incorrectly Billed as IP (short stay, IP vs. OP)
- Incorrect Units of Service
- Lack of Physician Orders
- Incorrectly Billing for Incarcerated Beneficiary
- Manufacturer Credits for Replacement Devices
- Incorrectly Billed IMRT Services
- Incorrectly Billed Observation Services
- Condition Code 44 Errors
- Incorrect/Undocumented Charges Resulting in Incorrect OP Outlier
- Non-Covered Dental Services
- Incorrectly Billed Lupron Injections
- Elective Procedures
- Incorrect Units for Doxorubicin Hydrochloride
- Billing for Drugs not Administered
- Incorrectly Billing Part B for OP Services Provided During an Inpatient Stay (Three Day Window Rule)
- Inpatient Only Procedures
- Incorrectly Billing to Medicare as Primary when Medicare is Secondary Payor
- Incorrect Revenue Code
- Incorrect Billing for Unlabeled Use of a Drug
- OP Surgeries with Units Greater than 1
- Claims Paid in Excess of Charges
- Same Day Discharge and Readmission
- IP psychiatric Facility ED Adjustments (for admit from ED)
- IP Claims Billed with Kyphoplasty Services
- Cancelled Surgical Procedures
- DRG Verification/High Severity DRGs
- Hospital Acquired Conditions
- Elective Procedures
- Discharge/Transfer Rules
- ABNs/HINNs
- Credit Balance Management
- Charge Code Accuracy (CDM Maintenance)
- Use of Modifiers that Result in Additional Payment (59, 25, etc.)



## How do you help your organization think differently? Some ideas:

- Create a crisis?
- Provide information about all of the issues?
- Bring in an expert?
- Send them to training!



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## Morgan Stanley

•Morgan Stanley was not prosecuted *“in part due to the company’s robust internal compliance program.”*

•Court documents detail Morgan Stanley’s Compliance Department’s efforts, including:

- Training Peterson on anti-corruption matters yearly for seven years;
- Distributed training materials to Peterson, including 35 separate compliance-related reminders;
- Requiring Peterson to certify his compliance in writing on multiple occasions;
- Compliance Officer had specific discussions with Peterson regarding aspects of the transactions involved in the non-compliance.

• *“An equally important lesson from the Morgan Stanley case was that when the prophylactic compliance measures failed, and Peterson’s conduct was uncovered, Morgan Stanley voluntarily disclosed the criminal conduct to the government and cooperated with the government’s investigation of Peterson.”*

Comments of Marshall L. Miller, Principle Deputy Assistant AG, Criminal Division, New York, NY (Oct. 7, 2014). Highlighting effectiveness of the compliance program at Morgan Stanley – prosecution of its (China) managing director for real estate.



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## Additional Information re: Morgan Stanley (from Garth Peterson Criminal Information)

### Morgan Stanley (“MS”) Compliance Program

- Frequent FCPA training
  - Variety of training methods included classroom, web-based and “reminders”
- A payment-approval process involving multiple approvals of all payments above specified amounts
- Between 2002-2008 MS employed 500 dedicated compliance officers including regional compliance officers to evaluate region-specific risks
  - (MS = 61,000 employee & \$32.5B in revenues w/10% margin)
- CO had a Direct line to MS Board of Directors and reported through the Chief Legal Officer to the CEO and Senior Management Committee
- Toll-free hotline staffed to field calls in every major language
- Provided firmwide FCPA related advisory services
- Involved in due diligence for potential business partners



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## Additional Information re: Morgan Stanley (from Garth Peterson Criminal Information)

### MS Compliance Program (cont)

- Regular review of compliance policies and annual formal review with outside counsel of FCPA policies
- Regular auditing & monitoring of business units
- Random audits of personnel in high-risk areas
- MS continually evaluated and improved its compliance program and internal controls

### MS Compliance Program and Garth Peterson

- Between 2002 and 2008 MS trained Peterson at least 7 times on FCPA
- MS also provided Peterson at least 35 FCPA compliance reminders
- MS required written certification of compliance with the FCPA from Peterson on multiple occasions and kept the certifications in Peterson's permanent employment record



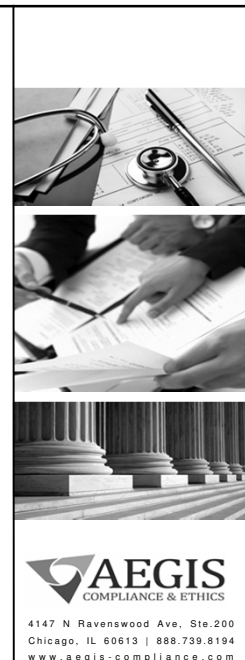
## Thinking Differently: The Important Role of Leadership

“Culture is a shared set of attitudes, goals, behaviors and values that characterize a group. It is how things get done in a company, and it influences the entirety of the employee experience – and therefore the customer experience. . . . and the CEO must constantly observe and manage for the culture he wants.

. . .

In my opinion the most critical word in definition of culture is *values*. It is the CEO's job to ensure that a company's values are applied consistently from top to bottom, across all departments. No person or group can be exempt.”

*The CEO Tightrope, How to Master the Balancing Act of a Successful CEO, Joel Trammel (2014)*





## Thinking Differently: The Importance of Leadership

- Reporting & Working Relationships
- Board Oversight Committee
- The Executive Level Compliance Committee



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## Thinking Differently: The Programmatic Nature of Compliance – Understanding the Elements as Part of a Unified Program

- Leadership
- Written standards
- Training & communication
- Auditing & monitoring
- Risk assessment
- Screening - personnel & business partners
- Reporting mechanism (e.g., hotline)
- Investigation & response



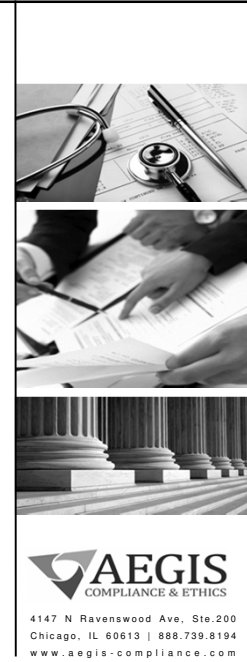
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## Thinking Differently: The Importance of Involving Leaders in the Risk Assessment and Work Plan Planning Process

- Understanding the risk environment
- Providing context to assist leaders in prioritizing identified risks
  - Concrete measures matter!
- Workplan: Its not just an audit plan!!
  - Target the controls environment



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## Thinking Differently: Provide Context for Risk Assessment

Risk Area	Number/ Frequency	\$ at Risk	Industry Settle- ments	Industry Settle- ments \$\$
Medical Director Arrangements	25 Med Dir	\$108M Medicare Referrals in 2015	10	\$25M to \$750M
Kyphoplasty IP	200 billed 2015	\$2 Million – Medicare in 2015	5	\$2M to \$5M
Short Stay/ One Day	2,521 Admissions in 2015	Avg \$3,200/case: \$8M Medicare in 2015	8	\$5M to \$35M; OIG OAS Audits
Replacement Device Credits	569 cases in 2015	Avg exposure \$4,750/case: \$2.7M Medicare in 2015	5	\$2M to \$3.5M; OIG OAS Audits



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## What does a comprehensive, well designed program look like in the health care industry?

### Use of Data Analysis

*"[the DOJ's] Fraud Section has an on-staff data analyst with decades of experience in the health care industry. She pores through the data looking for meaningful trends. Not simply finding bills for dead patients or identifying the providers with the highest billing, but using her expertise to find investigative leads, identify strategic trends and corroborate fraud tips . . . [institutional compliance programs also] have the ability to review abnormalities and identify trends reflecting possible fraud and waste within their health care institutions."*

Assistant U.S. Attorney General, Leslie Caldwell, remarks to the HCCA Compliance Institute, April 2016

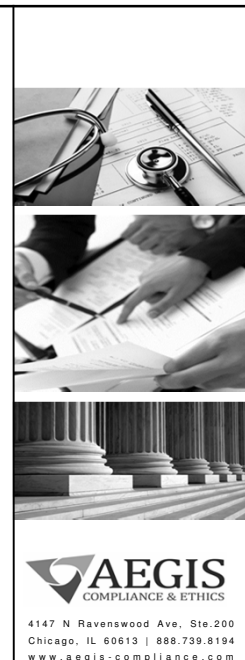
*"I think strong compliance must be data driven . . . [W]hen I look at compliance programs, the kind of data that they do and do not monitor tells me a lot about how sophisticated their program is."*

DOJ Compliance Expert, Hui Chen, in an interview with Laura Jacobus (Ethics & Compliance Initiative), February 1, 2016



## Thinking Differently: Establishing Targets, Measuring Achievements, Reporting and Creating Accountability

- Core Compliance Program Operations
  - e.g., training completion
- Work Plan Tasks
  - e.g., physician contract renewals; appropriate admission orders
- Corrective Action Plan Implementation
  - e.g., implementation by due date
- Connecting Compliance Metrics to Performance Evaluation and Compensation



## Thinking Differently: Establishing Targets, Measuring Achievements, Reporting and Creating Accountability

What gets measured gets done



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## Thinking Differently: What Compliance Officers Should Understand

- Understand compliance risks from your leadership team's perspective
- You are responsible for the compliance program – NOT for whether the organization is “in compliance”
- Perfection probably isn't attainable
- Rome wasn't built in a day

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