

Spring Cleaning - Dust Off Your Compliance Program Manual and Take Some Practical Steps to Reinvigorate Your Program

APRIL 1, 2013

Compliance program fatigue is nothing new. Over at least the last 15 years, health care organizations have jumped in head first, put together detailed manuals and taken the plunge. However, reimbursement cuts, quality initiatives, RACs, ZPICs, whistleblowers, physical plant renovations and simply significant industry challenges got in the way of sustaining an efficient and effective compliance effort. Health care organizations have also become desensitized to the barrage of compliance education, enforcement press releases, audits and reviews and other shock-value communications on the importance of regulatory compliance. In that vein, this very article may get lost in the shuffle, although, we hope it doesn't.

An efficient and effective compliance effort with your organization is extremely important, if only as an insurance policy against government scrutiny. Additionally, the Patient Protection and Affordable Care Act of 2010, H.R. 3590 ("ACA") includes requirements that CMS implement mandatory compliance program requirements for all providers and suppliers. In a distinct section of ACA, nursing home mandatory compliance programs were given a specific implementation timeline.

What we hope to accomplish with this article is to get you thinking about how you can do a little Spring cleaning, dust off your compliance program, reinvigorate your efforts and do something meaningful for your organization that produces results and uses resources efficiently and effectively. Below you will find 6 suggestions that involve blowing off the dust and thinking about improving your compliance program efforts.

Get a fresh read on your manual -

Take your manual off the shelf and have at least one senior manager, not part of your compliance function, read through the entire manual. Give them a Starbucks card or a nice fleece with the corporate logo on it for their time. Ask them to give you an unfiltered and honest assessment of the content and their understanding of the content. Ask them to let you know all they can about what seems to work, what does not work, what makes sense, what they don't understand and anything else they can add. Be prepared for some serious criticism and use it to your advantage as you analyze whether or not your manual accomplishes what you expect from it.

Burn your manual and start over, if you have to -

You don't want to hear this, however, you may find that the manual you developed, the manual you were given or the manual the company purchased is mostly useless to you from a practical and

operational perspective. The language used, the topics covered and the process just don't translate to effective compliance in your organization. If it is that bad, burn it and start over. Although, drastic action like that is normally an anomaly. What you should be prepared to do is to re-write or reconfigure portions of what you have to make them more user-friendly as well as updated with current thinking and regulatory requirements. As an example, ACA and certain significant legislation before it made some major changes to the federal fraud and abuse laws. If your program manual was written 7-10 years ago, it is very likely it is not current.

Educate employees on ethical and appropriate behavior, not on the treble damages that can be assessed under the Federal False Claims Act -

Dusting off your program also involves taking a good look at your employee education. Pull out that PowerPoint presentation that you have HR using with all new employees. When you read through your educational materials are they focused on appropriate, ethical and compliant behavior in a way that makes your employees "buy-in" to your corporate culture of compliance? Or, are they focused on explaining to a porter in an institutional health care setting what the penalties for non-compliance with the Federal False Claims Act are? If your answer is the latter, it is time to rethink how you are implementing your compliance educational efforts to make them effective. Retool those materials to garner respect, buy-in and a culture of compliant and ethical behavior from employees at all levels.

Most importantly, teach your employees how to utilize a "smell-test" mentality. Every employee doesn't always have to understand the exact ins and outs of a statute or regulation. However, they need to have an inner sense of when something does not "smell" right and they need the incentive to talk to someone within the organization about it in order to get the right answer or get comfortable with what concerned them.

The Compliance Officer is not a one person band, take a look and you will be surprised at what you find -

Many large and small organizations have one individual assigned either full or part-time to the organization's compliance efforts. While the amount of resources dedicated to compliance is an inherently individual exercise of each organization, effectively connecting that one person to other functional units within your organization is an imperative. Most, if not all, organizations have very significant internal efforts designed to meet quality assurance, risk management, reimbursement or other business objectives. The compliance officer is, more often than not, operating outside of those internal information flows. Creating an efficient and effective program requires organizations to get all of those efforts collaborating and working together efficiently.

Organizations often have compliance review or audits conducted either by internal or external personnel and have quality assurance reviews or audits done in the same manner. However, if you dug deep into these separate processes, you often find that somewhere between 70-100% of the work being done in these reviews or audits overlap. However, there is no connection between compliance and QA to get these activities completed more efficiently and effectively. The compliance department can be significantly amplified simply by ensuring that these connections exist and analyzing how to make the best use of the available resources. In most cases, you can

make the compliance officer way more than a one person band by simply integrating internal functions and making the appropriate connections between high and mid-level management.

Incentivize compliance and make your employees more accountable -

Creating a culture of compliance can bring an entirely new perspective to your employees and add to the stickiness they feel to their employer. Compliance program incentives such as give-aways for participation in voluntary compliance education can work wonders, recall the Starbucks card mentioned earlier. However, compliance program efforts with employees should include carrots and sticks. Employees need to understand the necessity and importance of compliant and ethical conduct. Are you currently asking employees on a regular basis to let you know whether they are aware of conflicts of interest or compliance related concerns? A compliance hot-line poster only goes so far and it does not create a feeling that “my company cares” with most employees. However, regularly asking employees for feedback and whether or not they have observed or been concerned about any business conduct will give them the understanding that compliance is an important function within the company and is a necessity.

Respond to identified issues -

If there is only one pearl you take from this article, take this one - when you are approached with a concern or complaint - do something meaningful to address it. Compliance related concerns come to the attention of the compliance officer and senior management on a pretty frequent basis. Doing something meaningful to investigate, understand, mediate and deal with the issue is likely the most important thing your compliance program can do for you. If you are not doing that effectively, your program simply is not working.

Creating good will with employees, ensuring that you have developed a culture of compliance and simply meeting current and future mandatory compliance requirements necessitate - doing something meaningful. Your compliance program will fall flat on its face quicker than you can imagine when you are, by design, inviting employees to raise issues that concern them but then failing to take meaningful action to address those issues. Meaningful action requires a well thought out response plan to the issue and some feedback to the reporter about what the company is doing to address the issue. Make sure you close that loop.

If you are solely focused on meaningfully doing something about reported issues and responding to questions, you will find your program is much closer to meeting its goals than you imagined. With that said, this is not an excuse for reactionary compliance efforts. In fact, it's a reminder that to be effective you cannot only focus on process but have to act appropriately to address identified issues in every circumstance. Don't dismiss the comment of a mid-level manager in the hallway because it wasn't reported through the hot-line. Do something about it and circle back to that manager, effective and efficient compliance programs do that every day.

Additional Information

For more information on making your compliance efforts work for your organization in a meaningful way, for help dusting off and reinvigorating your program or if you simply have health care regulatory

questions, please feel free to contact Ari Markenson or any member of our health care practice group for a further discussion.

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