

Letter from the CEO

ROY SNELL

Get rid of the low hanging fruit: Effective compliance programs vs. settlements

Editor's note: Roy Snell is Chief Executive Officer and Executive Director of the HCCA. If you have any questions or issues you would like Roy to address in an upcoming article, please e-mail him at rsnell@hcca-info.org.

To many, the war against healthcare is a business and business is really good. This situation reminds me of England during World War II. The streets were once filled with grand architecture and proud people drifting through with their heads held high. Healthcare was once a proud and respected place too. What were the people of England thinking as the enemy advanced? We did nothing wrong. Someone else can take care of it. We can stop them. They are after the other guy not me.

After the bombing, people hid in the basements of ruined buildings, some of which were still on fire. England's once bustling economy and busy streets became filled with rubble and people in dirty cloths standing in line with hands out. Did they ignore the warning signs?

The bombing in healthcare has been going on for several years. How can we stop it? Our main strategy is to attack our attackers. The healthcare industry is sitting in bunkers waiting for this war to end and telling everyone why it is unfair. Why is this strategy not working? Why are there so many settlements in healthcare?

This description is probably too dramatic to those who are not reading about the daily settlements. But you have to ask yourself, "Is healthcare winning this war?" Given the number of settlements, it appears the answer is no. Millions have been spent by associations to stop the attacks on our industry. Lobbying does not appear to be working.

A new government has been put in place, in part, because the new government promised to reduce regulations and be a kinder and gentler government. Can the new government defend us? If we bill for something that did not occur, can anybody prevent an attack on us? The new administration will be able to clear up some of the really unfair and confusing regulations. Unfortunately the advancing armies

are not attacking our positions with confusing regulations in their hands.

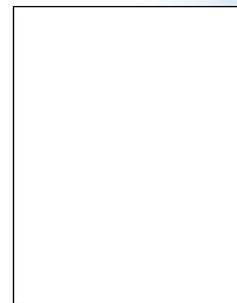
Confusing regulations

You know the ones [regulations] I'm talking about. We give examples of confusing and vague regulations every time we explain why the attack on healthcare is unfair. There are a few that fit that description. We speak of Stark and Safe Harbors from Stark and Son of Stark when the congressmen call us into hearings. We tell the Congressmen of the atrocities committed by the unruly armies. Congressmen frown their brows and promise to save our industry. The problem is that while we are giving examples of truly confusing regulations at hearings in DC, there is an army of agents back in our organization finding problems that are associated with regulations that are not quite so vague and confusing.

We poke holes in their dumb regulations, cross our arms and sit back with a smirk on our face. Then we settle another problem out of court because the mistake being attacked by the advancing army is related to a clearer regulation. It turns out that we billed for something that no one can explain. We tell people that the Stark rules are incomprehensible and therefore the war should be stopped. We are right, no one can understand the Stark Rules. The problem is that 99 out of 100 settlements are not related to the Stark rules or any of the other vague regulations on the books. Some regulations are vague but pointing this out is not helping. Apparently the advancing armies are not naive enough to rely solely on vague regulations. The problem is that the army is not attacking with stark bullets in their weapons. Read the settlements, you don't need a regulation to argue that a mistake had been made. That is why we settle and rarely ask for a Judge and jury to sort it out. We don't think they would buy our defense.

Defense

When we get into trouble we pay people to come in and look at the situation and tell us what we want to hear. We then tell them to go forth and stop the advancing army. We hire people to defend us that are so good at defending us that we can't see we may actually be wrong. We sit in our meeting rooms and work ourselves into frenzy. Our colleagues make great arguments about how we are right and the enemy is wrong. We stand up and say we are mad as hell and we are not going to take this any more. We charge out of the building into a hail of gunfire ... and then we settle. The last scene of Butch Cassidy and the Sundance Kid just flashed through my mind.



We are listening to some of the best debaters in the world tell us that we are right and those against us are wrong. We pay them to do this. We go to fraud and abuse conferences and the speakers pound the podium telling us "You have been wronged." We rush up to the podium afterwards to tell them how moved we were by their presentation but they have to rush off. They are needed at another meeting to negotiate another settlement.

Offense

Instead of spending money telling people the regulations are unfair and stupid, maybe we should be putting money into education and compliance programs that prevent the problems that we are currently settling. Maybe we should go on the offense and not the defense. Maybe if we did that the opposing army would go away. If we stop making mistakes that we have to settle there would be less money for the advancing army to fight us.

If we took away the low hanging fruit with education and effective compliance programs they would be forced to go after problems associated with vague and confusing regulations. Then we would gladly let a jury of our peers settle the disagreement. My guess is it would never come to that because when the low hanging fruit is gone from our trees they will attack another industry. Lets spend the money, not on paying people to tell us what we want to hear, but rather to help us put systems and procedures in place to prevent problems. Stop worrying about the complex and vague regulations, it's the simple and clear regulations that are killing us.

The people attacking healthcare are not naive. They are picking the low hanging fruit. They don't pursue cases that are associated with dumb and unfair regulations. They don't have to. They can win a battle every day of the week by pointing out mistakes that are so wrong we won't even fight it in court. When asked why we settled out of court and did not defend ourselves from the vague regulations we say, "we could not afford to defend ourselves, it would cost too much money. This is extortion," Then we pay a \$50,000,000 settlement. The man in the street scratches his head and says, "If you can't afford to fight, how can you afford to pay a \$50,000,000 settlement? Wouldn't a court case cost less?"

The only people we are fooling are ourselves. Are we going to wait until the buildings are burned to the ground or are we going to try another approach like getting it right the first time? Therein lies the mission of the HCCA and compliance programs. We don't attack, we don't defend, we just try to get it right. Compliance programs are designed to reduce the problems and take away the low hanging fruit. However, as long as there are low hanging fruit all the wailing and gnashing of teeth will not help us. ■



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