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Meet

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PAGE 14

**Compliance 101:
Effective compliance
training**

PAGE 61

Earn CEU credit

SEE INSERT

**Never say “never
events”**

PAGE 26

Feature Focus:

**The convergence of
risk in the health care
provider setting**

PAGE 44

Letter from the CEO

Values pushers: The new drug

People talk about a values-based approach to solving regulatory compliance problems. You have to ask yourself a question: Are people having problems only with values or are they also having problems complying with complex rules, laws, and regulations? Some people are having problems with values, but more people are having trouble with regulations. Values have little to do with understanding regulations. Regulations are specific; values are vague. You can be the most ethical person in the history of Planet Earth, but how can you be compliant with a regulation you don't know or understand?

We have too many people writing books and speaking about how values are enough. It's the trendy thing to do. All values pushers should come with a disclaimer: "Excessive reliance on values may lead to regulatory ignorance, non-compliance, and in some cases, may result in fines or jail time."

Surrounding all true compliance efforts are people discussing the importance of values. The problem is that some people imply (or in fact outright state) that teaching values is a replacement for, or better than, compliance. Because compliance is hard and requires resources, those listening to values pushers are straining to interpret that a values-based program is enough. Values pushers must be careful about what they say or imply.

This reminds me of Deming's famous exercise. He would ask someone to dip into a bucket of red and white marbles. He would tell the person to dip into the bucket until they got 50% red and 50% white marbles. They would not get it right, because the percentage of red and white marbles in the bucket was not even close to equal. Deming then said, "Well, since you can't get it right, we will add another counter to check your work." Together they would not get it right, so Deming added an auditor to check the work of the second counter.

Of course, that also failed to produce the required results of getting 50% red and 50% white marbles.

Deming's point is that beating on an employee to be successful with a process that doesn't work is doomed to failure. The corollary to this story is that constantly

pounding on an employee with the virtues of values to get them to be compliant with complex regulations they don't know or understand doesn't work. What you need to do is help employees understand their processes and the regulations affecting their processes.

Deming's exercise is analogous to using the values approach to solve regulatory problems. Do the right thing, do the right thing, do the right thing.... Values-based advocates tell their employees horror stories about unethical decisions people have made. Everyone in the room is

appropriately appalled. Then the employees are told not to do such a thing and they say, "Of course not." Everybody walks away with a great sense of pride. I am sure that some problems are averted with this method. The problem is, this method doesn't help anyone comply with complex regulations. To imply that

having values will help you comply with a law or regulations you don't know or understand, is simply wishful thinking. Give a monkey a typewriter and eventually he will accidentally type something coherent. Giving an employee values to comply with a heavily regulated industry has about the same chance of working.

The next time someone gets up in front of an audience and says rule-based compliance is bad and values/ethics are good, someone should stand up and say, "Are you ethical?" The speaker will say yes. Then the speaker should be asked, "Can you please tell me if I can code a simple 10-minute doctor visit a level 5 and bill Medicare?" The speaker will say, "I have no clue." Then he should be asked, "How the heck do you have the gall to tell these people in this audience that a rule-based compliance program is bad and teaching values is good? If I worked for you and your values-based approach to getting it right, I could end up in jail. How will your values-based program find me and help me get it right?"

Continued on page 73



ROY SNELL

Implying to leadership that sending out a code of conduct and doing a 'We are ethical' video is enough is irresponsible. You must be careful what you say, because people just might listen to you.

How can you help me? I think I am doing the right thing. I don't know I am doing the wrong thing. I signed the code of conduct. I watched your ethics video. But, you can't find me from behind your pulpit. You are implying to my leaders that compliance resources are not only less effective, you are implying that they may not be needed. You are putting me at risk and leaving me out in the cold."

Values-based program advocates are asking their employees to do the impossible. They are asking them to use platitudes be compliant with complex laws and regulations. To be compliant with regulations, you must understand the regulations that apply to your organization. To be compliant with a complex regulation, you must understand the processes within your organization that apply to that regulation. After values-based education, people walk away feeling good, but they have no idea what they don't know. To know what you don't know, you must audit, monitor, educate, investigate, and occasionally, discipline and report. In other words, you need a compliance program.

As I was writing this article, I got a call from a consultant who was working in a large organization that had massive compliance problems, but leadership was not interested in fixing them. He asked if I had any suggestions. We talked over many potential solutions for an hour. Along the way, he said the problem is the culture. The implication was that if the culture was right, they would listen to him. That, I said, was the wrong question. The question is, how do they fix their culture? I told him that they could espouse values all day long, but if they don't implement an effective compliance program, the culture may not change. Employees may not give any credence to the effort to improve the culture if leadership doesn't find problems, fix problems, and appropriately discipline repeat offenders. Culture change comes from your deeds and actions, not your rhetoric. You may

not be able to achieve your desired culture without investigation, enforcement, and discipline.

Let's assume that all the employees agree to have a culture of integrity, even though they see all only talk about values and little effort on ensuring the values are enforced. The culture change still would not help anybody understand regulations that affected their area. You still need auditing, monitoring, education, and investigations. You can't comply with regulations without a compliance program, and I don't think you can improve your culture without a compliance program. Your action must follow your words. My employees make it clear to me that they feel it is unfair to have rules that you don't enforce or enforce equally. It is inconceivable to me that I can have a positive culture in my office without compliance. We have an ethical culture because I tell them we must be ethical, and I enforce it without fail. I enforce it with investigation, enforcement, and discipline. If I don't, I ensure that I will have a negative culture.

Personally, I spend about 5% of my time devoted to compliance and values, telling people to do the right thing, and about 95% of my time investigating, auditing, monitoring, and educating, or in other words, running a compliance program. I make it abundantly clear that unethical behavior will be not tolerated; however, I spend most of my time backing up my words with action. Anybody who is emphasizing a values-based program over compliance may have to spend more time telling people to do the right thing. They will have to spend more time on values, because they now have to combat the employee's disappointment with the organization's lack of attention to enforcement and equal treatment of their coworkers. Employees will be disappointed, bitter, and may be more inclined to do the wrong thing if they see an emphasis on talking and lack of action. Too much reliance on the values or

the belief that telling people to do the right thing is enough can have the opposite of its intended effect.

Do we really need more people pushing values when so few are pushing compliance? We get told in church every Sunday to do unto others as they would do unto you. We are told in school over and over and over again, for close to 17 years, to do the right thing. Our parents tell us to do the right thing. We go to work and we sign a code of conduct and watch the ethics video. Everywhere in society we are told about the virtue of values. How much effect can saying, "Do the right thing" for the 500th time have on people? How often are you told to investigate, audit, monitor, and implement the other components of compliance? The virtue of values has been done and done again, and yet we have people thinking we need more. There is a point of diminishing return. Our money would be better spent on the often ignored, avoided, and criticized elements of a compliance program.

I am sure there are people who can tell us about the many different components of a values-based program. They would say that we don't just tell people to do the right thing. I am sure there are those who would say that it's a combination of things that make a values-based program more effective. There are a number studies and surveys and efforts to be more effective at telling people to do the right thing. I am sure you can be more effective at keeping people from cheating on their expenses with an effective values-based program. The problem is that the most effective values-based program in the world doesn't help people who don't know or understand the regulations. Stating or implying that it does is irresponsible.

People imply that teaching values is enough and that teaching values is a better approach than compliance. They want to use the carrot and not

Continued on page 75

the stick. People like to hear this vague approach because you don't need to get off the couch to get it done. Academics like it because, theoretically, it should work. CEOs like it because it's cheaper. Some compliance and ethics professionals like it because there is less pain involved.

Most of all, many people like values and they don't like compliance, because they don't like regulations and rule-based systems. Until the U.S. decides to abolish all regulations, I would suggest people be more careful about relying on, or implying that, a values-based approach is enough. We are safer in the U.S. because of our rule-based system. We have a better economy in the U.S. because of our rule-based system. I am tired of hearing people in other countries bashing our rule-based system. I am tired of hearing people in this country bashing our rule-based system. It is politically incorrect to support the US rule-based system. Consider me politically incorrect – I unabashedly support our rule-based system. Our rule-based system got us to where we are today.

Most importantly, people who imply that compliance is bad and teaching values is enough, block effective resolutions to problems. We can not get enough time or resources for compliance efforts. Implying to leadership that sending out a code of conduct and doing a “We are ethical” video is enough is irresponsible. You must be careful what you say, because people just might listen to you. If you cause people to believe that anything other than effective compliance program is enough, you will have a negative impact on the resources of the compliance program. That is what a lot of people want to be told. That is what a lot of people want to believe. I wish compliance with a rule-based society was that easy. It is not. Values pushers are good-hearted people, but they impede compliance efforts and unwittingly become part of the problem and not the solution. ■

Utilization Review Accreditation Commission (URAC), organizations should consider establishing a compliance work group that includes individuals from the Compliance, Internal Audit, Risk Management and Quality departments, as well as other departments that may be involved in the risk management process. This work group should meet on a frequent basis, and everyone in the group should have an understanding of each other's roles in the organization. This work group could be responsible for suggesting corrective action plans for implementation in departments with identified risks, as well as conducting follow-up reviews on these corrective action plans to verify that they have been implemented. The work group would also monitor whether the plans resulted in improved processes.

Lastly, even if there is no one with the formal title of Risk Officer, there should be a process for communicating among the departments and upwards to the C-suite executives and the Audit and/or Compliance Committee of the board. Organizations should take an in-depth look at this function and ensure that the appropriate individuals have been assigned to the key roles of addressing compliance, risk, and quality. Further, individuals who are responsible for the compliance, risk, internal audit, and quality functions should have the prerequisite knowledge and experience that allows them to fully understand their job duties and how to best use their departments to meet the needs of the organization.

Future projections

Based on the current status of risk management and the leading practices that are currently used in the industry to address this issue, it may become common practice for organizations to either obtain a risk officer (or someone who may informally fill this role) and/or to implement a Risk Committee that meets on a regular basis. The Risk Committee is made up of a variety of individuals, including those from Internal Audit,

Compliance, Risk Management and Quality departments, as well as any other departments that play a role in addressing and managing risks within the organization. It will become imperative that these departments interact and communicate, especially when it pertains to conducting an organization-wide risk assessment, following an annual work plan, addressing risks, implementing corrective action plans, and verifying these corrective action plans.

Conclusion

The face of risk has expanded in most organizations. With the advent of new and broader risks in health care, organizations are looking for ways to better manage risk. It can be quite overwhelming when looking at a risk universe for health care, with over 100 regulatory bodies from which many providers are governed. Strategic and financial risks are also resident in everyday operations, and compliance risks continue to become more cumbersome to manage. Clearly, audit committees and boards recognize the fiduciary responsibility they have to the organization to provide oversight and guidance in the mitigation of risk.

Many organizations have performed risk assessments and update those assessments on an annual basis. However, there are still organizations that have yet to initiate a formal risk assessment process which can serve as the starting point of a risk work plan from which risks will be managed. Once an overall risk assessment has been completed, a more tactical plan should be administered to tackle the mitigation of those risks. ■

The views expressed herein are those of the authors and do not necessarily reflect the views of Ernst & Young LLP.

1 Physician Pay for Performance in Medicaid: A Guide for States, Center for Health Care Strategies, Inc., March 2007. Available at http://www.chcs.org/publications3960/publications_show.htm?doc_id=471272
 2 US Department of Health and Human Services Medicare Hospital Value-Based Purchasing Plan Development, Issues Paper, January 2007. Available at http://www.cms.hhs.gov/AcuteInpatientPPS/Downloads/Hospital_VBP_Plan_Issues_Paper.pdf