

Strategies to Build An Effective Compliance and Ethics Program

THAT STANDS THE TEST OF TIME, CHANGE AND SEASONS



Disclaimer

THE VIEWS SHARED TODAY ARE NOT NECESSARILY THE VIEW OF OUR ORGANIZATIONS AND ARE OUR PERSONAL VIEWS.

Discussion Goals

Discuss best practice strategies to establish a strong compliance and ethics program framework.

Provide and review essential materials and resources for our toolboxes to strengthen our proficiencies.

Engage participants in discussion regarding methodologies to reinforce our programs and key partnerships through defined accountabilities and metrics.

Federal Sentencing Guidelines

§ 8B2.1. Effective Compliance and Ethics Program

An organization shall— (1) exercise due diligence to prevent and detect criminal conduct; and (2) otherwise promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law.

Compliance & Ethics (C&E) Elements Framework

Assessment of Effectiveness
C & E Program Evaluation (PDSA)

High Level Oversight
Compliance Officer Role & Compliance Committee & Governance
Board of Directors

Establish Standards
Develop and Disseminate Policies & Standards for Business Conduct

Auditing & Monitoring
Establish Periodic & Continuous Testing of Controls

Compliance elements in place

Promote an C&E Culture
“Tone at the Top”
Incentives

Risk Assessment
Evaluation and Prioritization of Risks & Identification of Mitigation Strategies

Leadership commitment to participate

Open Lines of Communications
Confidential Message Line, Surveys & Exit Interviews

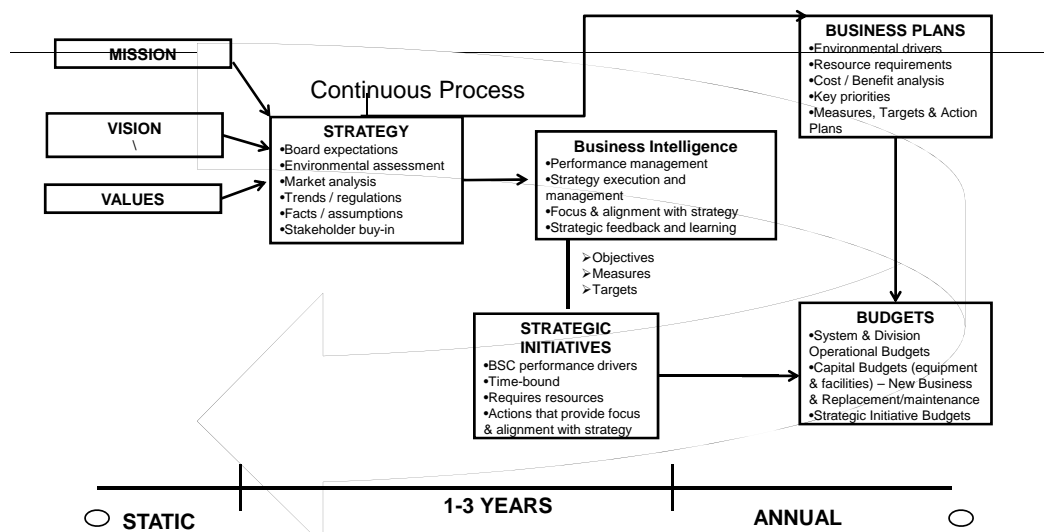
Detection, Remediation & Enforcement
Timely Response to Misconduct, Consistent Sanctions, Exclusion Screening, & CAPs

Education/Training
Roles, Risks & Values Based

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What Is Your C&E Strategy Plan & Process?



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Alignment of Strategic Pillars C&E Program

- Safety
- Quality
- Patient Satisfaction
- People
- Finance
- Community
- Other?



The Compliance & Ethics Program Plan Strategic C & E Plan

- Strategy Language: Scorecard vs. Dashboard
 - Collection of data, monitoring, diagnostics, managing and have linkages
 - Balanced Scorecard focus: strategy, priorities, accountabilities, and targets
 - Dashboard: more tactical focused monitoring on critical process points (driver)
 - Key Performance Indicators
 - Business performance management
- **SWOT**
 - Regulations
 - Responsibilities
 - Relationships
 - Resources

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Federal Sentencing Guidelines

- FSG for organizations introduced the concept of compliance programs to reduce criminal culpability for business organizations in 1991
- Sarbanes-Oxley Act required US Sentencing Commission to review and amend guidelines to enhance the compliance and ethics program effectiveness in 2004
- Amendments encourage business organizations to partner with the Federal government and promote self policing, reporting and cooperation in investigations of its own wrongdoing
- OIG Compliance Guidance 1998 – Hospital Guidance amended 2005

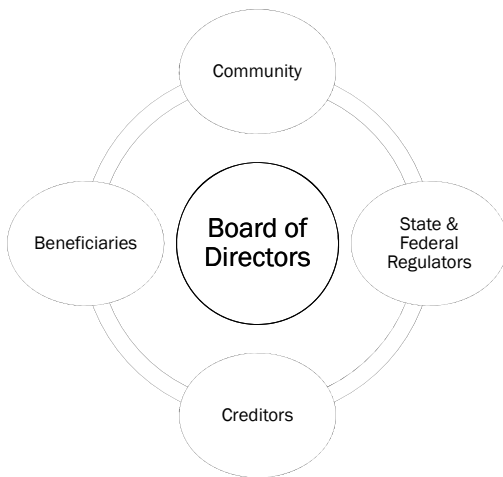
High-level Oversight Of C&E Program Board & The Leadership Framework Sets the Tone



- (2) (A) The organization's governing authority shall be: knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight
- (B) High-level personnel shall ensure the organization has an effective compliance and ethics program. Specific individual(s) within high-level personnel shall be assigned overall responsibility.
- (C) Specific individual(s) within the organization shall be delegated day-to-day operational responsibility for the compliance and ethics program.....

The Board's Core Obligations

Compliance & Ethics Program – Duty of Care



(2) (A) The organization's governing authority shall be: knowledgeable about the content and operation of the compliance and ethics program and shall exercise reasonable oversight

- Director's fiduciary obligations include:
 - A good faith effort
 - Information regarding compliance with laws is brought to board's attention on a regular and timely basis

Executive Leadership Role

Compliance & Ethics Program



"Incumbent upon a health system's corporate officers and managers to provide ethical leadership to the organization and to assure that adequate systems are in place to facilitate ethical and legal conduct."

- *Office of Inspector General*

A leader is one who knows the way, goes the way, and shows the way.

- *John C. Maxwell*

Executive Leadership Role

C&E Program –The Priority Tension & Balance



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Executive Leadership Role

Compliance & Ethics Program – CCO & CO

“Accountability is equally important, and belongs to the business line. The role of the compliance officer is to make sure that the business line knows the compliance risks, not to assume them, the panelists said. Partial quote - Gregory J Millman with the Wall Street Journal Blog: *“Risk and Compliance Journal “The Morning Risk Report: Compliance Verses Growth”*”

<http://blogs.wsj.com/riskandcompliance/2014/04/24/the-morning-risk-report-compliance-versus-growth/>

(B) High-level personnel





(C) Specific individual(s) delegated day-to-day operational responsibility for the compliance and ethics program.....

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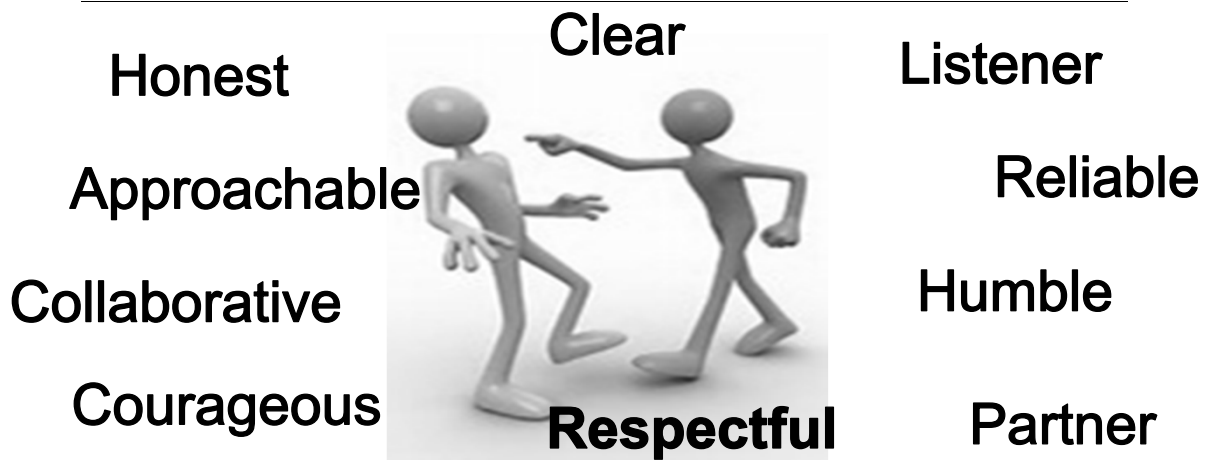
Communication Forums and Opportunities

Regularly Monitor Risk and Communicate with Stakeholders

- 60 Day Overpayment <https://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2016-Fact-sheets-items/2016-02-11.html>
 - Failure to report - liability under FCA <http://www.jdsupra.com/legalnews/60-day-overpayment-fca-enforcement-85782/>
- Yates Memo & DOJ <https://www.dlapiper.com/~media/Files/Insights/Publications/2016/04/assessyourcomplianceprogram.pdf>
- OIG - <https://oig.hhs.gov/newsroom/video/2016/eoo/index.asp> ← 
- OIG Advisory Opinions
- OIG Corporate Integrity Agreement (CIAs)
- CMS Transmittals
- Accreditation Guidance
- PEPPER <https://www.pepperresources.org/> 
- HEAT <https://www.stopmedicarefraud.gov/newsroom/index.html>  

Compliance & Ethics Officer Influence

“Successful leadership today is influence, not authority.” *Kenneth Blanchard*



Promote a Compliance and Ethical Culture

Accountability and Incentives

PROMOTING RESPONSIBLE
& ETHICAL BEHAVIOUR

FSG: (6) The organization's compliance and ethics program shall be promoted and enforced consistently throughout the organization through (A) appropriate incentives to perform in accordance with the compliance and ethics program;

“Regardless of the type of reward, developing criteria for incentives, implementing it, and executing a plan of action will benefit the organization, demonstrate effectiveness, and create awareness of the compliance program in a positive manner.” *Shawn DeGroot, Associate Director at Navigant Consulting*

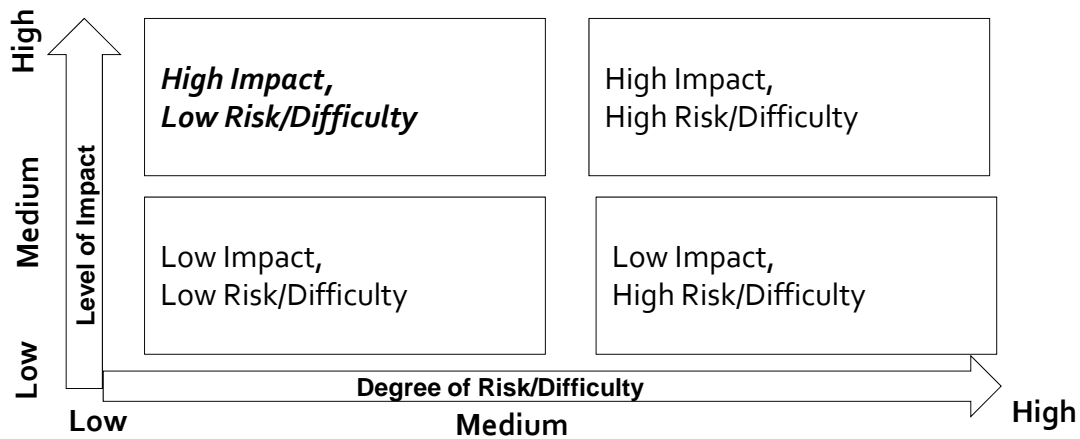
C&E Program Strategic Alignment

The C&E Plan Strategy To Influence Culture



- **Define C&E Documents:** The Compliance Plan vs. Annual Work Plan; Committee Charters; Other Committee overlaps for feedback loops; more...
- **Define the Strategy:** Address how C&E through assessment and risk prioritization assist with allocating resources to mitigate risk
 - **Establish Expectations and Accountability:** Develop incentives to meet goals and define roles, partnerships and requirements
 - **Performance Measurement and Effectiveness:** Track, maintain, evaluate and report and communicate routinely

Organizational Strategy Risk Prioritization Matrix Align the C&E Strategy Plan



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C&E Program Strategic Alignment

Pillar: Quality or Community or Finance?



C&E Strategy: Meet quality standards (P4P)

Risk to achieve the goal: Quality outcomes, timely reports, HACs, and other

Goal: Audit the monitor and report identified activities

Regulatory Reference: CPGs & CIAs address quality

Performance Measure: Define # of Audits (frequency, target performance to meet and timeline)

Incentive: Number of points or % impacts bonus and/or performance reviews

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Establish Written Standards for Conduct

Code of Conduct & Policies (communicated)

(b) Due diligence and the promotion of an organizational culture that encourages ethical conduct and a commitment to compliance with the law within the meaning of subsection (a) minimally require the following:

(1) The organization shall establish standards and procedures to prevent and detect criminal conduct.



“Honesty is the best policy.”

Benjamin Franklin

Education and Training

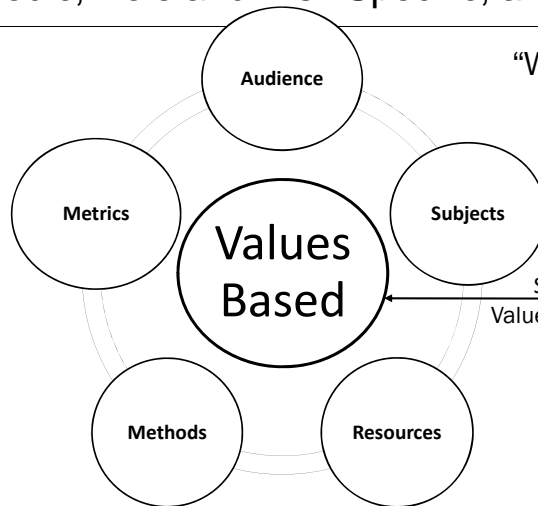
Periodic, Role and Risk Specific, and Values Based

(4) (A) The organization shall take reasonable steps to communicate periodically and in a practical manner its standards and procedures, and other aspects of the compliance and ethics program, to the individuals referred to in subparagraph (B) by conducting effective training programs and otherwise disseminating information appropriate to such individuals' respective roles and responsibilities.



Education and Training

Periodic, Role and Risk Specific, and Values Based



“When you know better you do better.”



Maya Angelou

Scenarios-problem solving, application & consequences

Values: the importance, worth, or usefulness of something.

LM Partners

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C&E Program Strategic Alignment

Pillar: People

C&E Strategy: Maintain a qualified workforce

Risk to achieve the goal: Workforce knowledge of C&E Program and expectations to identify, prevent and report concerns

Goal: Audit and Monitor and report workforce participation or Establish monitoring of credentials

Regulatory Reference: FSG and OIG CPG

Performance Measure: Define % of timely completion of assigned training

Incentive: Number of points or % impacts bonus or performance reviews

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Open Lines of Communication

Confidential Message Line, Surveys & Exit Interviews

(5) The organization shall take reasonable steps— (C) to have and publicize a system, which may include mechanisms that allow for anonymity or confidentiality, whereby report or seek guidance regarding potential or actual criminal conduct without fear of retaliation.

Awareness Strategies



Detection/Remediation/Enforcement

Screening, Response (Corrective Action Plans)



(3)use reasonable efforts not to include within the substantial authority personnel of the organization whom the organization knew, or *should have known through the exercise of due diligence, has engaged in illegal activities or other conduct inconsistent with an effective compliance and ethics program.*

(6) (B) appropriate disciplinary measures ...

(7) the organization shall take reasonable steps to respond to prevent further similar criminal conduct, including **making any necessary modifications** to the organization's compliance and ethics program.

HR Partners

C&E Program Strategic Alignment

Pillar: People

C&E Strategy: Satisfied workforce through a C&E and just culture.

Risk to achieve goal: Inconsistent discipline, unreported issues, fear of retaliation and potential whistleblowers.

Goal: (1) Promote open lines of communication and how to identify and report compliance and ethics opportunities. (2) Develop and enforce disciplinary standards

Regulatory Reference: FSG, OIG CPG, DRA

Performance Measure: (1) *Define* % of participation to be met. (2) Developed and implemented standards within specified time.

Incentive: Number of points or % impacts bonus or performance reviews

C&E Program Strategic Alignment

Pillar: Community

C&E Strategy: Increase Corporate Responsibility and C&E Culture through screening and detection

Risk to achieve goal: Hire ineligible workforce (excluded), fines, reputation

Goal: Establish screening for excluded individuals and monitor activity

Regulatory Reference: FSG, OIG, OIG Advisory 2013, Social Security Act

Performance Measure: Policy and department procedures defined and implemented. Define roles and % of participation to be met

Incentive: Number of points or % impacts bonus or performance reviews

Corrective Action Plans

Oversight of Mitigation

- Root Cause(s) understood
- Participation of stakeholders and experts
- Assigned responsibilities
- Defined mitigation and timelines
- Leadership sponsor (oversight for accountability)
- Report completion
- Approval of Corrective Action Plan
- Ongoing monitoring and reporting (oversight for accountability)
- Compliance Monitor(verify its fixed)



C&E Program Strategic Alignment

Pillar: Community

C&E Strategy: Increase Corporate Responsibility and C&E Culture

Risk to achieve goal: Compliance opportunities not mitigated, fines, penalties, loss of reputation

Goal: Effective implementation of Corrective Action Plans (CAPs)

Regulatory Reference: FSG and OIG CPG

Performance Measure: # of CAPs completed timely and effectively
CAPs may be associated with external/payer audits or internal audit activities and outcomes OR % of participation in role based training or policy acknowledgement

Incentive: Number of points or % impacts bonus or performance reviews

Assessment Activities

Risk Assessment, Auditing, Monitoring & Program Effectiveness

(5) The organization shall take reasonable steps—

(A) to ensure that the organization's compliance and ethics program is followed, including monitoring and auditing to detect criminal conduct." Thus, auditing and monitoring activities must be in place for the organization's compliance program to be deemed effective.

(B) to evaluate periodically the effectiveness; and

(c) shall periodically assess the risk (b) to reduce the risk of criminal conduct identified through this process

Assessment Partners

C&E Program Strategic Alignment

Pillar: Financial

C&E Strategy: Improve operating efficiency, integrity and efficiency

Risk to achieve the goal: Stark/AKS, overpayments....

Goal: Evaluate documentation, coding and billing controls, contracts, payments, procurement, overpayments.....

Regulatory Reference: FSG, OIG CPG

Performance Measure: Define %/# of repayments processed on time

Incentive: *Number of points impacts bonus and/or performance reviews*

Auditing Verses Monitoring

- Audits are evaluations that are conducted by an individual who is independent from the operations being assessed. Audits are periodic and typically retrospective and done through sample.
- Monitoring is an ongoing assessment that may be completed by either the compliance professional or by an individual within the operations area (who would then be responsible for ongoing reporting of the results). It is often automated and concurrent.

Risk Assessment

To Create the Annual Compliance & Ethics Work plan Goals

(c) In implementing subsection (b), the organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement set forth in subsection (b) to reduce the risk of criminal conduct identified through this process.

Mission	Financial	Legal	Risk Impact	Likelihood	Complexity	Vulnerability	Controls	Risk Prioritization Score (RPS)	Comments
2	5	2	9	3	1	27	4	20	
4	4	5	13	5	3	195	3	98	
1	2	1	4	3	1	12	2	3	
3	3	4	10	4	3	120	3	60	
3	4	3	10	3	3	90	5	90	
5	4	3	12	4	5	240	4	180	

“Plan your work and then work your plan

Margaret Thatcher, Former Prime Minister of UK

The Annual Work Plan

To Mitigate Risk, Implement Internal Controls & C&E Culture

Communicate:

1. **Why:** risk background and priority
2. **What:** describe risk program area
3. **Who:** project lead & responsible committee oversight
4. **When:** timeline to start and complete
5. **How:** scope, focus and method
6. **Frequency:** data evaluation and reporting result

Risk Number	Case #	Purpose of Identifying Risk and Risk					Oversight			
		Risk Assessment	Impact	Likelihood	Overnight Controls	E.A. Finding & CAP	Project Owner(s)	Scope for Identified Project Owner(s)	Quarter and Timeline completion	Report To:
		See last page for key to risk assessment evaluation								
		High Level Oversight and Governance (BOG, Leadership Committee & Compliance Officer)								
1		Establish Standards of Conduct (Policies and Procedures and Business Conduct)								
2		Open Lines of Communication (CML, Exit Interviews, Surveys)								
3		Detection, Remediation and Enforcement (Screening)								
4		Auditing and Monitoring								
5		Promoting a Compliance and Ethical Culture (Incentives & Performance)								
6		Education, Awareness and Training - Culture Development								
7		Internal Controls Evaluation for Implementation by Management - Compliance Dashboard								
8										

Program Effectiveness Assessment

(B) to evaluate periodically the effectiveness of the organization's compliance and ethics program;

- Internal and external assessments
 - The program
 - * C&E Elements in how they work in concert with the
 - * Strategic plan and
 - * Work plans
 - The C&E department and people
 - * Expertise
 - * Resources
 - * Accountability



Thank you!

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