



How to Become a Data Driven Compliance Professional

HCCA – Compliance Institute
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Introductions



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Introductions



**Joseph Zielinski,
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How to Become a Data Driven Compliance Professional Agenda for Today's Discussion

1. Discuss what contributes to the complexity of data analytics
2. Incorporate data analytics into your compliance program under DOJ guidance.
3. Identify relevant regulatory compliance risks with public data and free reports.
4. Use Data to measure effectiveness of your program and to identify audit targets.
5. Review free compliance program effectiveness tool based on government requirements.

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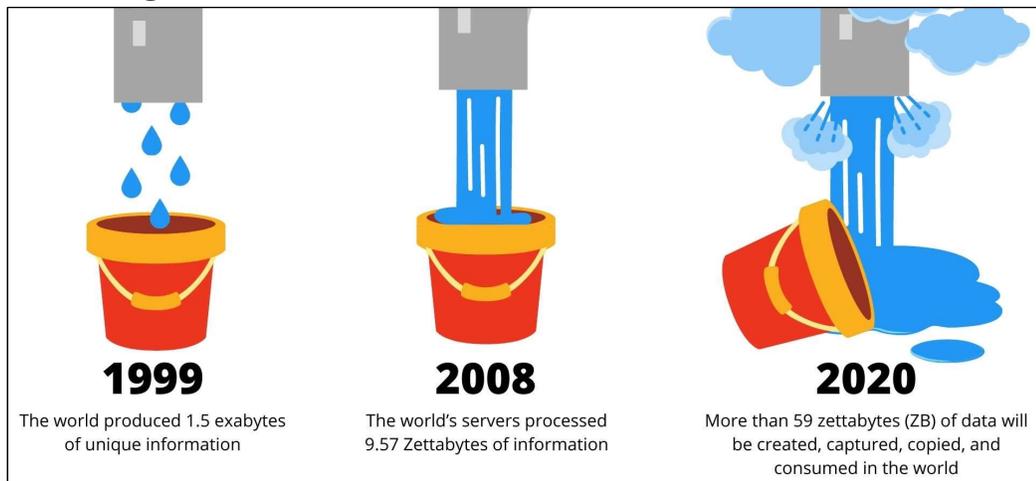
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Agenda: Complexity of Data Analytics

1. Discuss what contributes to the complexity of data analytics
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Complexity of Data Analytics: Increasing Amount of Available Data



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Complexity of Data Analytics: Increasing Amount of Data – 1999 vs. 2020

1 Gigabyte = About **120 mins** of standard definition movie

1 Exabyte = About **120 Billion mins** of standard definition movie

1 Zettabyte = About **120 Trillion mins** of standard definition movie



1999

The world produced 1.5 exabytes of unique information

In 1999, the World produced data equal to about 350 Thousand years' worth of movies



2020

More than 59 zettabytes (ZB) of data will be created, captured, copied, and consumed in the world

In 2020, the World produced data equal to about 13.5 Billion years' worth of movies

<https://www.forbes.com/sites/gilpress/2013/05/09/a-very-short-history-of-big-data/?sh=31a259d765a1>
<https://www.makeuseof.com/tag/memory-sizes-gigabytes-terabytes-petabytes/>

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Complexity of Data Analytics: Increasing Amount of Available Data Technological Growth from 1965 to 2021

Moore's Predication in 1965 (Doubling of Components Every Year)

- April 19, 1965 - Gordon Moore predicted: "The complexity for minimum component costs has increased at a rate of roughly a factor of two per year. Certainly, over the short term this rate can be expected to continue, if not to increase. Over the longer term, the rate of increase is a bit more uncertain, although there is no reason to believe it will not remain nearly constant for at least 10 years."

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Complexity of Data Analytics: Increasing Amount of Available Data

Technological Growth from 1965 to 2021

Moore's Law in 1975 (Doubling of Components Every Two)

- “So the original one was doubling every year in complexity now in 1975, I had to go back and revisit this... and I noticed we were losing one of the key factors that let us make this remarkable rate of progress... and it was one that was contributing about half of the advances we were making. So then I changed it to looking forward, we'd only be doubling every couple of years”



https://hasler.ece.gatech.edu/Published_papers/Technology_overview/gordon_moore_1965_article.pdf

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Complexity of Data Analytics: Increasing Amount of Available Data

Technological Growth from 1965 to 2021

Moore's position as of 2005

- Forty years after his prediction Moore was quoted as saying, “It can't continue forever. The nature of exponentials is that you push them out and eventually disaster happens.”
- Although Moore recognized that the trend could not last forever, he forecasted in 2003, 2007, 2010, and 2015 that it would continue for another decade or so.



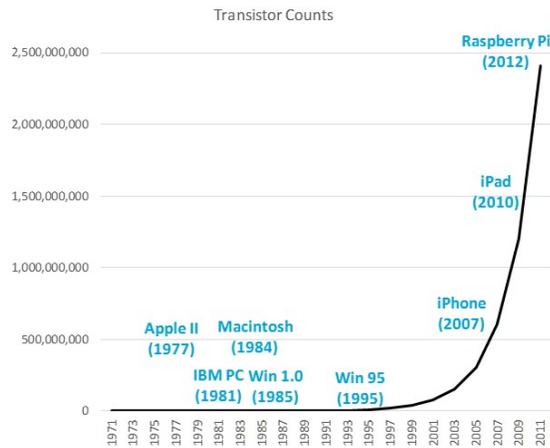
<https://web.archive.org/web/20050426010126/http://www.techworld.com/opsys/news/index.cfm?newsid=3477>
<http://ctlj.colorado.edu/wp-content/uploads/2015/12/v2.Final-Yoo-11.25.15-JRD.pdf>

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Complexity of Data Analytics: Increasing Amount of Available Data

Moore's Law 1965 & 1974: Logarithmic Depiction



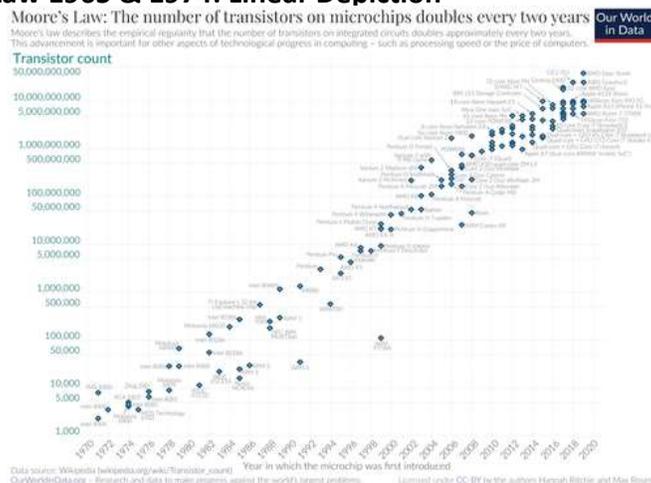
<https://cdn.ttgtmedia.com/ITKE/uploads/blogs.dir/284/files/2016/10/Moore-Exponential.png>

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Complexity of Data Analytics: Increasing Amount of Available Data

Moore's Law 1965 & 1974: Linear Depiction



<https://cdn.ttgtmedia.com/ITKE/uploads/blogs.dir/284/files/2016/10/Moore-Exponential.png>

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Complexity of Data Analytics: Increasing Amount of Available *Healthcare* Data

ICD-9 transition to ICD-10 – October 1, 2015

- In October of 2015, the Health Insurance Portability and Accountability Act (HIPAA) mandated covered entities transition to new set of codes for electronic transactions.

| Differences Between ICD-9-CM and ICD-10 Code Sets | | |
|---|--------------|------------------|
| | ICD-9-CM | ICD-10 code sets |
| Procedure | 3,824 codes | 71,924 codes |
| Diagnosis | 14,025 codes | 69,823 codes |

Agenda: Data Analytics Under DOJ Guidance

1. Discuss what contributes to the complexity of data analytics
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Data Analytics Under DOJ Guidance: Department of Justice – Guidance Resources

U.S. Department of Justice
Criminal Division

Evaluation of Corporate Compliance Programs

(Updated June 2020)

Introduction

The “Principles of Federal Prosecution of Business Organizations” in the Justice Manual describe specific factors that prosecutors should consider in conducting an investigation of a corporation, determining whether to bring charges, and negotiating plea or other agreements. JM 9-28.300. These factors include “the adequacy and effectiveness of the corporation’s compliance program at the time of the offense, as well as at the time of a charging decision” and the corporation’s remedial efforts “to implement an adequate and effective corporate compliance program or to improve an existing one.” JM 9-28.300 (citing JM 9-28.800 and JM 9-28.1000). Additionally, the United States Sentencing Guidelines advise that consideration be given to whether the corporation had in place at the time of the misconduct an effective compliance program for purposes of calculating the appropriate organizational criminal fine. See U.S.S.G. §§ 8B2.1, 8C2.5(f), and 8C2.8(11). Moreover, the memorandum entitled “Selection of Monitors in Criminal Division Matters” issued by Assistant Attorney General Brian Benczkowski (hereafter, the “Benczkowski Memo”) instructs prosecutors to consider, at the time of the resolution, “whether the corporation has made significant investments in, and improvements to, its corporate compliance program and internal controls systems” and “whether remedial improvements to the compliance program and internal controls have been tested to demonstrate that they would prevent or detect similar misconduct in the future” to determine whether a monitor is appropriate.

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Data Analytics Under DOJ Guidance: Three Key Questions

1. Is the Company’s Compliance Program Well Designed?
2. Is the Company’s Compliance Program Being Implemented Effectively?
3. Does the Company’s Compliance Program Work in Practice?

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Data Analytics Under DOJ Guidance: Three Key Questions

1. Is the Company's Compliance Program Well Designed?

Risk Management Process: What methodology has the company used to identify, analyze, and address the particular risks it faces? **What information or metrics has the company collected** and used to help detect the type of misconduct in question? How have the information or metrics informed the company's compliance program?

Confidential Reporting and Investigations: Are reporting and investigating mechanisms sufficiently funded? How has the company **collected, tracked, analyzed and used information** from its reporting mechanisms? Does the company periodically **analyze the reports or investigations findings for patterns** of misconduct or other red flags for compliance weaknesses?

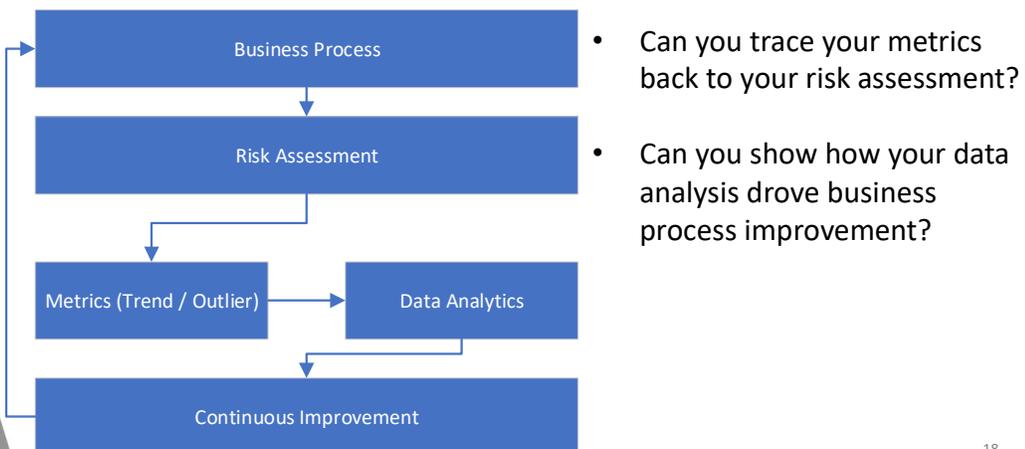


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Data Analytics Under DOJ Guidance: Three Key Questions

1. Is the Company's Compliance Program Well Designed?



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Data Analytics Under DOJ Guidance: Three Key Questions

1. Is the Company's Compliance Program Well Designed?

Tracking Performance of the Compliance Function

Activity / Process Metrics

- Years of experience – compliance function / industry
- # of high-risk areas reviewed
- # of compliance issues initially detected – by compliance
- Benchmarks on above – peers, industry

Outcome Metrics

- Number of compliance issues initially detected – externally (by regulators, outside auditors, customers)

Data Analytics Under DOJ Guidance: Three Key Questions

2. Is the Company's Compliance Program Being Implemented Effectively?

Autonomy of Compliance Department: Do compliance and control personnel have the appropriate experience and qualifications for their roles and responsibilities? Has the level of experience and qualifications in these roles changed over time? Who reviews the performance of the compliance function and what is the review process?

Incentive System: Has the company considered the implications of its incentives and rewards on compliance? How does the company incentivize compliance and ethical behavior? Have there been specific examples of actions taken (promotions or awards denied) as a result of compliance and ethics considerations? Who determines the compensation, including bonuses, as well as discipline and promotion of compliance personnel?

Data Analytics Under DOJ Guidance: Three Key Questions

2. Is the Company's Compliance Program Being Implemented Effectively?

Incentives

- For any metric tied directly or indirectly to an incentive or recognition program – what could happen if the incentive was a "\$5 million" bonus?

Assume a Value Based Health Environment

- # or % of additional eligible diagnosis codes identified
- % of charts with fully eligible diagnosis codes
- % of charts which are accurate regarding diagnosis codes
- What compensation controls / metrics can you put in place based on tracked business unit metrics?



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Data Analytics Under DOJ Guidance: Three Key Questions

3. Does the Company's Compliance Program Work in Practice?

Continuous Improvement Periodic Testing and Review: What is the process for determining where and how frequently internal audit will undertake an audit and what is the rationale behind that process? Did audits occur and what were the findings? How often does internal audit conduct assessments in high-risk areas? What testing of controls collection and analysis of compliance data and interview of employees and third-parties does the company undertake? How often has the company updated its risk assessment and reviewed its compliance policies, procedures, and practices?

Analysis and Remediation of Any Underlying Misconduct: Payment Systems: Were there prior opportunities to detect the misconduct in question? What specific changes has the company made to reduce the risk that the same or similar issues will not occur in the future?



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Data Analytics Under DOJ Guidance: Compliance Assessment Tool: Cross-Walk to DOJ Expectations

COMPLIANCE PROGRAM ASSESSMENT TOOL

Contents

COMPLIANCE PROGRAM MANUAL COMPLIANCE ASSESSMENT TOOL CROSS-WALK TO DOJ EXPECTATIONS 1

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Definitions 1

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Continuous Improvement and Periodic Testing 25

Investigations & Root Cause Analysis 27

Federal Sentencing Guidelines Alignment and Assessment

| Federal Sentencing Guideline Element | Our Overall Organization Alignment | Department of Justice June 2020 Guidance Questions | Our Specific Activities from the Period Under Review | Our Continuous Improvement Ideas |
|--------------------------------------|---|---|--|----------------------------------|
| <i>Risk Assessment Process</i> | Compliance program risk assessment is conducted and mitigation plans for high risk areas are undertaken. Alignment with overall enterprise risk management efforts is in place. | <p>What methodology has the company used to identify, analyze, and address the particular risks it faces?</p> <p>What information or metrics has the company collected and used to help detect the type of misconduct in question?</p> <p>How have the information or metrics informed the company's compliance program?</p> | | |
| | | <p>Does the company devote a disproportionate amount of time to policing low-risk areas instead of high-risk areas, such as questionable payments to third-party consultants, suspicious trading activity, or excessive discounts to resellers and distributors?</p> <p>Does the company give greater scrutiny, as warranted, to high-risk transactions (for instance, a large-dollar contract with a government agency in a high-risk country) than more modest and routine hospitality and entertainment?</p> | | |

<https://www.sunhawkconsulting.com/>

Agenda: Track Current Regulatory Compliance Risks

1. Discuss what contributes to the complexity of data analytics
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Manage Current Regulatory Compliance Risks: Track Regulatory Compliance Risks with Public Data

Healthcare Enforcement and Audit Websites

- HHS OIG Work Plan
 - <https://www.oig.hhs.gov/reports-and-publications/workplan/index.asp>
- HHS OIG Audits
 - <https://www.oig.hhs.gov/newsroom/whats-new/index.asp>
- CIA Documents
 - <https://oig.hhs.gov/compliance/corporate-integrity-agreements/cia-documents.asp>
- DOJ Press Releases – Federal and State Level
 - <https://www.justice.gov/news>
 - <https://www.justice.gov/usao/find-your-united-states-attorney>
- HHS OCR Resolution Agreements and Civil Money Penalties
 - <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/agreements/index.html>



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Manage Current Regulatory Compliance Risks: Free Summary Reports

HHS OIG Completed Audits by Provider/Payer Type



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Manage Current Regulatory Compliance Risks:

Free Summary Reports

HHS OIG Audit Work Plan by Provider/Payer Type



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Manage Current Regulatory Compliance Risks:

Free Summary Reports

OIG Corporate Integrity Agreement Summary Report



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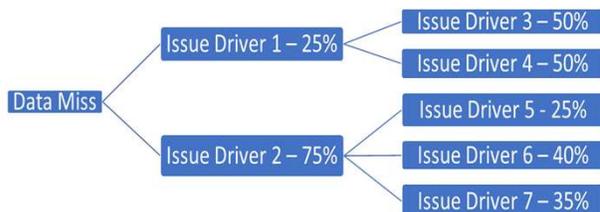
Agenda: Data Analytics

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Data Analytics: Periodic Testing and Analysis of Data

- # of Audits by Type
- Low Risk Areas
- High Risk Areas
- Finding Analysis – Compliance Related Business Metrics



- Root Cause Methodologies: 5 Whys / Six-Sigma
- Process Improvement: Automated Controls / AI

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Data Analytics: Evaluating Metrics

- **Activity Metrics:** Number of transactions with limited insight into the quality of those events
- **Process Metrics:** Assesses the overall process, but not the stakeholder needs
- **Outcome Metrics:** Directly tied to a desire of the stakeholder

| Framework to Evaluate Metrics | 1 - Good | 2 - Better | 3 - Best |
|-------------------------------|-----------|-------------|----------|
| Utility of Metric | Activity | Process | Outcome |
| Cost to Obtain / Maintain | Difficult | With Effort | Easy |

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Data Analytics: Is there Alignment on Metrics to Monitor?

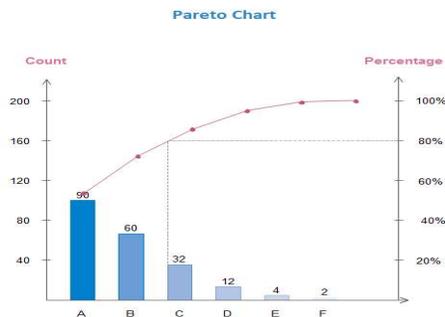
| Governance Area | Financial Metrics | Operational Metrics | Satisfaction Metrics | Compliance Metrics |
|---------------------|-------------------|---------------------|----------------------|--------------------|
| Audit | ✓ | | ✓ | ✓ |
| Compliance | ✓ | | ✓ | ✓ |
| Business Operations | ✓ | | ✓ | ? |
| Quality | | ✓ | ✓ | ? |
| Safety | | ✓ | | ? |
| Risk Management | ✓ | | ✓ | ? |
| Executive Committee | ✓ | | ✓ | ? |
| Board | ✓ | | ✓ | ? |

- How is compliance monitoring embedded into all oversight groups?
- How is compliance serving its role as the second line of defense?

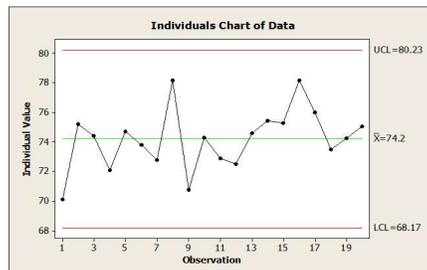
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Data Analytics: Types of Metrics

- Can the reader assess the outcome without extensive interpretation?



Pareto charts assist in root cause analysis



Run charts assist in calibrating variability

Data Analytics: Types of Metrics

- Automated vs Manual
- Preventative vs Detective
- Number vs Percentage vs Per 1000/Per 100
 - 500 complaint calls
 - 5% of our patients
 - 5 / 100 patients
- Trends / Benchmarks / Year over Year Comparisons
 - This month's complaints were up 8/100 vs 5/100 last month
 - Year over year – complaints were same this month as last year at 8/100 due to seasonality of
- Actual to Goals / Upper and Lower Thresholds

Data Analytics: Types of Metrics

Key Control Indicators – Generally activity metrics designed to identify when a control is no longer effective or meeting the control objective

- % of claims audited
- % of nurses meeting continuing certification requirements

Key Risk Indicators – Generally process metrics that foreshadow a level of risk outside the organization's risk tolerance

- Average nurse absentee rate
- Average experience of senior claims supervisors

Key Performance Indicators – Generally outcomes metrics that identify a stakeholder needs

- Claims billed accurately
- Complaints resolved to patient / beneficiary satisfaction

Data Analytics: Data Governance

- How can I trust my metrics?
- For key compliance related operational data – can I always trust the data?

Does your organization have a Data Governance Committee?

- Key data identification
- Key data mapping
- Source / extraction / transformation / loading / reporting
- What are the touch points to the data?
- Metadata management
- Data steward identification

Data validation audits

- More than taking a sample of transactions and validating them
- What data controls are in place?
- How often do I need to repeat the data validation?

Data Analytics: Reporting Your Metrics

Exception Reporting vs Full Metric Portfolio

- Lead with outcome exceptions / concerns
- Show your work (your process) in the appendix

Unit / Executive / Board Level

- Why different?
- Small issues / foreshadowing potential concerns

Review for clarity

- Have someone unfamiliar with the data look at the metrics and explain back to you what they mean.
- Use thresholds, goal/budget/target to actual, benchmarks to show where metric is in relation to desired outcome.



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Data Analytics: Provider Audit Case Study: Medical Practices

Sarasota-Based Ophthalmic Consultants Agrees to Pay \$4.8 Million To Resolve Claims of Multi-Dosing Patients

The US Attorney for the Middle District of Florida announced that Ophthalmic Consultants, P.A. (Sarasota, FL) and Dr. Robert K. Snyder—collectively, Ophthalmic Consultants—have agreed to pay \$4.8 million and enter into a three-year Integrity Agreement to resolve allegations of healthcare fraud.

The DOJ reported allegations that Ophthalmic Consultants had submitted false claims to Medicare, TRICARE, and the Federal Employees Health Benefits Program (FEHBP) for treatments using the drugs ranibizumab (Lucentis) and aflibercept (Eylea) to treat patients who had wet age-related macular degeneration or other diseases of the eye. Although each vial contains a moderate overfill, Lucentis and Eylea are single-use medications that are not designed for multiple uses. Notwithstanding the single-use nature of Lucentis and Eylea, Ophthalmic Consultants engaged in the practice of multi-dosing (using a single drug vial to provide doses to multiple patients) to obtain excessive reimbursements.

The Integrity Agreement includes also includes routine inventory requirements as well as requirements focusing on proper billing and submission of reimbursement claims.

The claims resolved by the settlement are allegations only, and there has been no determination of liability.



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Data Analytics: Provider Audit Case Study: Hospital Systems

Oklahoma City Hospitals Agree to Pay \$2.8 Million to Settle Allegations of Submitting False Claims to Medicaid

The U.S. Attorney's Office of the Western District of Oklahoma reported that Oklahoma Heart Hospital, LLC and Oklahoma Heart Hospital South, LLC, have agreed to pay \$2,800,000 and enter into a five-year corporate integrity agreement to settle civil claims stemming from allegations that they submitted false claims to Medicaid.

The DOJ reported allegations that, from January 1, 2010, through December 31, 2016, OHH caused false claims to be submitted to Medicaid for certain nonemergency prescheduled cardiovascular stent procedures under Diagnosis Related Group Codes 247 and 249. The claims were false because OHH billed the procedures as inpatient services to increase its revenue when the procedures should have been billed and reimbursed as outpatient services.

The claims resolved by the settlement are allegations only, and there has been no determination of liability.

Data Analytics: Provider Audit Case Study: Hospital Systems

Avanti Hospitals LLC, and Its Owners Agree to Pay \$8.1 Million to Settle Allegations of Making Illegal Payments in Exchange for Referrals

The US DOJ announced that Los Angeles-based Avanti Hospitals LLC (Avanti) and six of its owners will pay the federal government \$8.1 million and enter into a five-year corporate integrity agreement to settle claims that they violated the False Claims Act by submitting, or causing Avanti's subsidiary, Memorial Hospital of Gardena (Gardena Hospital), to submit false claims to the Medicare and Medicaid programs for medical services referred by a physician who received kickbacks and other improper payments from Gardena and other Avanti affiliates. This agreement resolved the allegations that Avanti, Gardena Hospital and at least two other Avanti affiliates provided compensation to a physician they engaged as a medical director that (1) exceeded fair market value for his services, and (2) was an attempt to incentivize him to refer patients to Gardena Hospital.

The settlement partially resolves allegations originally brought in a lawsuit filed under the qui tam, or whistleblower, provisions of the False Claims Act by Dr. Joshua Luke, the former C.E.O. of Gardena Hospital. Dr. Luke will receive approximately \$1.6 million from the federal government.

The claims resolved by the settlement are allegations only, and there has been no determination of liability.

Data Analytics: Provider Audit Case Study: Nursing Facilities

Compliance with Federal Requirements for Life Safety and Emergency Preparedness

In 2016, the Centers for Medicare & Medicaid Services (CMS) updated its life safety and emergency preparedness regulations to improve protections for all Medicare and Medicaid beneficiaries, including those residing in long-term-care facilities (commonly known as nursing homes). The updates included requirements that nursing homes have expanded sprinkler systems and smoke detector coverage; an emergency plan that is reviewed, trained on, tested, and updated at least annually, and provisions for sheltering in place and for evacuation. OIG's objective was to determine whether California, Missouri, Texas, and Florida ensured that selected nursing homes in the state that participated in the Medicare or Medicaid programs complied with CMS requirements for life safety and emergency preparedness.

Data Analytics: Provider Audit Case Study: Nursing Facilities

Skilled Nursing Facility Infection Prevention and Control Programs

The Centers for Disease Control and Prevention has indicated that individuals at high risk for severe illness from coronavirus disease 2019 (COVID-19) are people aged 65 years and older and those who live in a nursing home. Currently, more than 1.3 million residents live in approximately 15,450 Medicare- and Medicaid-certified nursing homes in the United States. As of February 2020, State Survey Agencies have cited more than 6,600 of these nursing homes (nearly 43 percent) for infection prevention and control program deficiencies, including lack of a correction plan in place for these deficiencies. To reduce the likelihood of contracting and spreading COVID-19 at these nursing homes, effective internal controls must be in place. OIG's objective is to determine whether selected nursing homes have programs for infection prevention and control and emergency preparedness in accordance with Federal requirements.

Agenda: Free Compliance Effectiveness Reporting Tool

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Free Compliance Effectiveness Reporting Tool: How to use the Data You've Gathered

1. How to use the tool
2. What to do with the data you create



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Dinsmore

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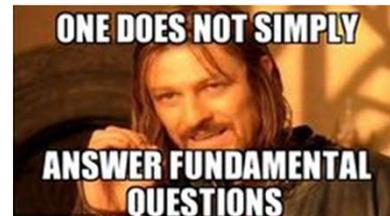
Free Compliance Effectiveness Reporting Tool: What is in the Tool?

1. Department of Justice (Criminal Division) Evaluation of Corporate Compliance Programs
2. Office of Inspector General Seven Elements of an Effective Compliance Program
3. “Measuring Compliance Program Effectiveness: A Resource Guide” – HCCA-OIG Compliance Effectiveness Roundtable



Free Compliance Effectiveness Reporting Tool: DOJ Evaluation of Corporate Compliance Programs

1. Is the corporation’s compliance program well designed?
2. Is the program being applied earnestly and in good faith? In other words, is the program adequately resourced and empowered to function effectively?
3. Does the corporation’s compliance program work in practice?



Free Compliance Effectiveness Reporting Tool: OIG Seven Elements of an Effective Compliance Program

1. Implementing written policies, procedures and standards of conduct.
2. Designating a compliance officer and compliance committee.
3. Conducting effective training and education.
4. Developing effective lines of communication.
5. Conducting internal monitoring and auditing.
6. Enforcing standards through well-publicized disciplinary guidelines.
7. Responding promptly to detected offenses and undertaking corrective action.



Free Compliance Effectiveness Reporting Tool: Measuring Compliance Program Effectiveness

- A. How does this interact with other Governmental Guidance?
 - i. Overlapping requirements
 - ii. Common Elements
 - iii. Similar questions to validate program



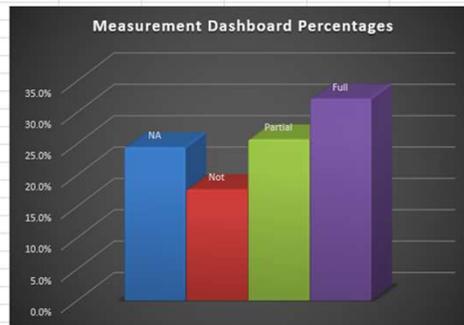
Free Compliance Effectiveness Reporting Tool: Tool Overview

Measuring Compliance Program Effectiveness

Evaluated [enter Month Year] by [enter Your Name]

Each element has both an Overview (OV) section and a Measurement (ME) section.
The Measurement section has an additional dashboard worksheet with sub-totals.

| Legend | Description | Comment |
|---------|-----------------------------|-------------------------------|
| NA | Not Applicable at this time | Doesn't pertain to us |
| Not | Not Implemented yet | Not started or barely started |
| Partial | Partially Implemented | Well into it but more to do |
| Full | Fully Implemented | Virtually all done |



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Free Compliance Effectiveness Reporting Tool: Tool Overview

DOJ CCP Dashboard

| Fundamental Question | Requirement Description | NA at this time | NotSatisfied | Partially Satisfied | Fully Satisfied | Total |
|----------------------|--|-----------------|--------------|---------------------|-----------------|---------------|
| 1 | Is the corporation's compliance program well designed? | 24 | 0 | 0 | 0 | 24 |
| 2 | Is the program being applied earnestly and in good faith? In other words, is the program adequately resourced and empowered to function effectively? | 13 | 0 | 0 | 0 | 13 |
| 3 | Does the corporation's compliance program work in practice? | 13 | 0 | 0 | 0 | 13 |
| Totals | | 50 | 0 | 0 | 0 | 50 |
| Percentages | | 100.0% | 0.0% | 0.0% | 0.0% | 100.0% |

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Free Compliance Effectiveness Reporting Tool: Tool Overview

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- [OV DOJ CCP WIP](#)
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- [ME1 P&P](#)
- [OV2 Admin](#)
- [ME2 Admin](#)
- [OV3 Eval](#)
- [ME3 Eval](#)
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- [ME7 Invest](#)

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Free Compliance Effectiveness Reporting Tool: Tool Overview

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DOJ CCP Dashboards

Fundamental Question 1: Is the corporation's compliance program well designed?

| Category | Count | NA | Not | Partial | Full |
|--|-----------|-----------|----------|----------|----------|
| Risk Assessment | 4 | 4 | 0 | 0 | 0 |
| Policies and Procedures | 5 | 5 | 0 | 0 | 0 |
| Training and Communications | 4 | 4 | 0 | 0 | 0 |
| Confidential Reporting Structure and Investigation Process | 4 | 4 | 0 | 0 | 0 |
| Third Party Management | 4 | 4 | 0 | 0 | 0 |
| Mergers & Acquisitions (M&A) | 3 | 3 | 0 | 0 | 0 |
| Totals | 24 | 24 | 0 | 0 | 0 |

Fundamental Question 1: Is the corporation's compliance program well designed?

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Free Compliance Effectiveness Reporting Tool: Tool Overview

| TOC | | 24 | 0 | 0 | 0 | | | |
|---|---|--|---------------|---------------------|-----------------|----------|-----------------------------|------------------------|
| U.S. Department of Justice Criminal Division Fraud Section "Evaluation of Corporate Compliance" | | Assessment Ratings | | | | Reserved | | |
| Fundamental Question 1: Is the Corporation's Compliance Program Well Designed - The "critical factors in evaluating any program is adequately designed for maximum effectiveness in preventing and detecting wrongdoing by employees and whether corporate management is enforcing the program or is it tacitly encouraging or pressuring employees to engage in misconduct". Accordingly, prosecutors should examine "the comprehensiveness of the compliance program," ensuring that there is not only a clear message that misconduct is not tolerated, but also policies and procedures - from appropriate assignments of responsibility, to training programs, to systems of incentives and discipline - that ensure the compliance program is well-integrated into the company's operations and workforce. JM 9-28-800. | | NA at this time | Not Satisfied | Partially Satisfied | Fully Satisfied | Comments | Measurement Cross-Reference | No Rating Count Errors |
| Item# | Overview Topic | Overview Actions to be Taken to Prove Effectiveness | | | | | | |
| | Risk Assessment: Prosecutor Considerations: The starting point for a prosecutor's evaluation of whether a company has a well-designed compliance program is to understand the company's business from a commercial perspective, how the company has identified, assessed, and defined its risk profile, and the degree to which the program devotes appropriate scrutiny and resources to the spectrum of risks. In short, prosecutors should endeavor to understand why the company has chosen to set up the compliance program the way that it has, and why and how the company's compliance program has evolved over time. See JM 9-28-800; JM 9-47-1202(c); see also U.S.S.G. Section 8B2.1(c) | <ul style="list-style-type: none"> Prosecutors should consider whether th program is appropriately "designed to detect the particular types of misconduct most likely to occur in a particular corporation's line of business" and "complex regulatory environment" For example, prosecutors should consider whether the company has analyzed and addressed the varying risks presented by, among other factors, the location of its operations, the industry sector, the competitiveness of the market, the regulatory landscape, potential clients and business partners, transactions with foreign governments, payments to foreign officials, use of third parties, gifts, travel and entertainment expenses, and charitable and political donations. Prosecutors should also consider "the effectiveness of the company's risk assessment and the manner in which the company's compliance program has been tailored based on that risk assessment" and whether its criteria are "periodically updated". The organization shall periodically assess the risk of criminal conduct and shall take appropriate steps to design, implement, or modify each requirement [of the compliance program] to reduce the risk of criminal conduct. Prosecutors may credit the quality and effectiveness of a risk-based compliance program that devotes appropriate attention and resources to high-risk transactions, even if it fails to prevent | | | | | | |

Free Compliance Effectiveness Reporting Tool: Tool Overview

| Item# | Overview Topic | Overview Actions to be Taken to Prove Effectiveness | NA at this time | Not Satisfied | Partially Satisfied | Fully Satisfied | Comments | Measurement Cross-Reference | No Rating Count Errors |
|-------|---|---|-----------------|---------------|---------------------|-----------------|----------|-----------------------------|------------------------|
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| A | Risk Management Process | <ul style="list-style-type: none"> What methodology has the company used to identify, analyze, and address the particular risks it faces? What information or metrics has the company collected and used to help detect the type of misconduct in question? How have the information or metrics informed the company's | X | | | | | 5.27, 5.28 | |

Free Compliance Effectiveness Reporting Tool: How to Use Data from the Tool

1. Tracking of changes in responses over time
2. Differences in responses based on job title/rank
3. Development of Audit/Work Plan
4. Identifying areas of risk
5. Ability to demonstrate value of program



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Questions?

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