

Is Your Compliance Program Measuring Up?: Guidelines Offer Practical Advice to Judge Effectiveness

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Editor's note: This is the second of two articles on measurement of compliance program effectiveness (see part 1 in the January 2004 Journal of AHIMA). The authors were members of a Health Care Compliance Association (HCCA) task force that developed a resource guide on compliance program evaluation.

Creating an effective compliance program requires more than just activities that respond to the seven compliance program elements discussed in the Office of Inspector General's (OIG) compliance guidelines. A compliance program must be designed to be effective in an organization. Regular measurements of the program's efforts and outcomes can play a significant role in demonstrating that an organization has a program in place that is effective in preventing and detecting compliance failures.

To provide guidance, HCCA published "Evaluating and Improving a Compliance Program: A Resource Guide for Health Care Board Members, Health Care Executives, and Compliance Officers" in 2003.¹ The guide focuses on fundamental elements of a compliance program: compliance standards; education and training; communication; monitoring and auditing; enforcement and discipline; and investigation, response, and prevention. This article highlights the guide's suggestions for developing a practical approach to measuring the effectiveness of your compliance program.

The Foundation: Policies and Procedures

Policies and procedures provide the basic foundation of a compliance program. The compliance officer's primary role is to ensure that appropriate topics and areas of risk have been identified and are addressed in an organization's policy and procedure documents. The compliance officer should also confirm that policy or procedure documents are consistent at a departmental level and that all policies and procedures are consistent with legal and regulatory requirements for business behavior.

Policies can be used for different purposes. They provide a standard for compliant behavior and may be the basis for compliance education, as well as the basis for progressive discipline when the policy is violated. It is important to define the purpose or purposes for which a policy may be used before it is developed. Compliance officers should monitor adherence to key policies and ensure that some type of review or audit of the high-risk areas addressed by an organization's compliance policies is conducted periodically.

The HCCA resource guide provides several questions that can be used to evaluate an organization's compliance policies:

- Do policies and procedures exist for relevant topics and areas?
- Have the requirements of the policies and procedures been communicated to employees?
- Have audits been conducted to monitor compliance with the policies and procedures?
- When employees are interviewed during an audit or review, do they understand what the policies require?
- Have audits revealed fewer errors in areas where policies have been implemented?²

From Awareness to Understanding: Education and Training

Compliance programs usually include some form of education and training. In the early days of a compliance program's development, education and training often focus on basic awareness of the compliance program and what it requires, employee behavioral principles related to "doing the right thing," and an employee's duty to report suspected compliance failures. As a

compliance program develops, the focus of compliance education and training is often expanded to include more substantive, rules-based education and training related to high-risk areas for the organization.

In addition to developing a training program that addresses organizational compliance risks, a compliance officer must monitor participation in training by employees, medical staff members, and other nonemployee agents and contractors and confirm that participation is tracked and recorded. A compliance program will only be effective as a defense against allegations of wrongdoing if the organization can prove that training occurred. Involving managers in enforcing required training is key to success—employees' motivation to complete training will be significantly greater if they know that their direct supervisors want training to be completed.

The HCCA resource guide recommends several questions to ask in assessing the effectiveness of compliance training activities:

- What percentage of employees receive an introduction to the compliance program promptly following commencement of employment?
- Does the organization have a plan to train nonemployee agents and contractors who need compliance training?
- Are tests or surveys used to evaluate employee understanding and retention of compliance training?³

A Culture of Communication

A culture of open communication that encourages employees to report suspected noncompliance is critical to a successful compliance program. Confidential or anonymous reporting mechanisms and a culture that does not tolerate retaliation when a good faith report occurs are key. Tracking reports and ensuring the investigation and resolution of discovered problems are also essential to compliance program success.

The HCCA guide suggests that organizations consider the following when assessing the effectiveness of their reporting mechanisms:

- Do necessary communication policies (requiring an employee to report noncompliance and prohibiting retaliation for such reports) exist, and have they been implemented and maintained?
- Are reporting mechanisms publicized throughout the organization?
- Have employees been surveyed to evaluate their knowledge of the reporting mechanism? What were the results of the survey?
- Is there a trending of questions, issues raised, or potential misconduct to direct where the organization should focus its compliance efforts?⁴

The Test: Auditing and Monitoring

Next to training, the second central element of an effective compliance program is an auditing and monitoring program designed to test and confirm that legal and regulatory requirements are being met.

The number and complexity of compliance auditing and monitoring activities will vary with the size and complexity of an organization. Some audits may be completed annually (e.g., DRG coding audits), whereas others might be one-time audits to test an organization's compliance in an identified risk area (e.g., a one-time audit based on a risk area identified on the OIG workplan).

One of the currently proposed changes to the Federal Sentencing Guidelines' chapter on sentencing of organizations is a requirement that organizations conduct an annual risk assessment. A risk assessment often includes an environmental assessment (e.g., recent changes in relevant regulations or areas the OIG identifies as risks for the organization). However, risk assessment may also include a broad-based audit designed to identify risk areas that require further attention.

The HCCA guide provides the following questions to assess the effectiveness of the organization's auditing and monitoring activities:

- Is the organization conducting a regular auditing and monitoring program consistent with the size, complexity, and scope of its business operations?

- Does the organization have a written compliance auditing and monitoring plan that includes subject, method, and frequency of audits?
- Have written corrective action plans been produced and followed when adverse findings were encountered?
- Does analysis of the results of repeat audits indicate an upward trend of improvement in the organization's understanding of and compliance with internal and external standards?⁵

Still Necessary: Enforcement and Discipline

The long-term effectiveness of an organizational compliance program will necessarily depend on its ability to effect change when problems are discovered. In healthcare it is generally the case that problems are not the result of intentional misconduct. Instead, problems often develop in a fast-paced work environment that is appropriately focused on patient well-being but subject to a dizzying array of complex regulatory requirements. In this environment, when problems are found, effective change management will require persistence and persuasion.

However, if persistence and persuasion are not enough, or if problems are the result of intentional or negligent misconduct, it is essential that an organization have mechanisms for enforcing regulatory and policy requirements. These must include policies and processes for disciplining those who fail or refuse to comply.

To assess the effectiveness of an organization's enforcement and disciplinary mechanisms, the HCCA guide suggests the following questions:

- Does the organization have policies and procedures addressing enforcement of compliance standards and discipline of individuals who violate them?
- Is compliance an element of performance reviews and incentive compensation plans?
- Does a review of disciplinary actions undertaken as a result of compliance failures indicate that discipline is consistently and fairly administered?
- What percentage of employees satisfy the compliance elements of their performance reviews and incentive compensation plans?⁶

Investigation, Response, and Prevention

An effective compliance program will include processes for responding to reported or discovered noncompliance. Appropriate responses may include promptly halting noncompliant activity to mitigate or eliminate any ongoing harm; investigating to determine the existence, scope, and causes of the noncompliance; responding with appropriate corrective action; and implementing preventive measures to avoid similar future misconduct. Effective investigation, response, and prevention may be the most difficult area of compliance program operation.

The HCCA guide suggests the following questions for assessing this element of a compliance program:

- Are the findings, status, and outcomes of internal investigations reported regularly to appropriate oversight and management bodies? Do these bodies record their oversight of the organization's investigation, response, and prevention activities in their respective minutes?
- Has the organization developed written policies or protocols for responding to government investigations?
- Does an aging of closed and ongoing investigations demonstrate that the organization is promptly resolving reports of suspected noncompliance?
- Do the organization's monitoring efforts indicate that preventive measures undertaken in response to noncompliance are effective in eliminating future instances of similar noncompliance?⁷

The questions suggested in the guide provide a template for developing assessment tools and questions to measure both the efforts that go into a compliance program and the outcomes the program is able to achieve. The guide includes more questions than have been republished in this article. Answering many of its questions will help you develop an objective measurement of the outcomes of a compliance program regularly. ❖

Notes

1. Health Care Compliance Association. "Evaluation and Improving a Compliance Program: A Resource for Health Care Board Members, Health Care Executives, and Compliance Officers." 2003. Available online at www.hcca-info.org under "Compliance Info."
2. Ibid., 12.
3. Ibid., 16.
4. Ibid., 20.
5. Ibid., 25–26.
6. Ibid., 28–29.
7. Ibid., 34–35.

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