Measuring Compliance Program Effectiveness

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Effectiveness

The capability of producing a <u>desired</u> result. When something is deemed effective, it means it has an intended or expected outcome.

Wikipedia

The intended or expected outcome is identification, prioritization and mitigation of risk.

Compliance Program Elements

1. Standards, Policies, and Procedures
2. Compliance Program Administration
3. Screening and Evaluation of Employees, Physicians, Vendors and other Agents
4. Communication, Education and Training on Compliance Issues
5. Monitoring, Auditing, and Internal Reporting Systems
6. Discipline for Non-Compliance
7. Investigations and Remedial Measures

Standards, Policies and Procedures

- Accessibility
  - Survey employees, test policy link, test key words in a searchable database
- Accountability
  - Is a policy coordinator designated?
  - Does management take responsibility for implementation?
  - Is an owner assigned?
- Review and Approval Process
  - Did the Board approve the Compliance Plan? Is it reflected in the minutes?
  - Is there a policy list to allow for tracking?
  - Is there a policy on policies? Is it being followed?
  - Audit process by which policies and procedures are prepared, approved and disseminated.

Standards, Policies and Procedures

- Quality
  - Language and reading level (interview staff)
  - Language translation
  - Are policies useful? (Ask employees if they assist them in doing there job, does the policy and procedure reflect the current process)
- Assessment
  - Checklist of policies – company vs. compliance
  - Are those affected by the policy given the opportunity to weigh in during development? (focus groups)
  - Do policies exist that correlate with identified risks?
  - Develop a policy inventory.
  - Does a compliance plan exist?
  - Are confidentiality statements obtained and kept on file?

Standards, Policies and Procedures

- Understanding
  - Do employees understand the policies and procedures (surveys/focus groups)
  - Does compliance discuss the code at orientation?
  - Do policies reflect actual practice? (audit, interview and observe)
  - If misconduct is identified, was there a policy in place?
- Enforcement
  - Audit for policy violations
  - Are owners held accountable for supervisory oversight?
  - Fair and consistent discipline

Code of Conduct

- Review distribution dates, board approval, attestations.
- Assure employees understand the Code. (Conduct focus groups)
- Are employees aware of the Code? (Interviews, surveys)
- How often is the Code reviewed? (Adhere to Policy on Policies)
- Do employees receive the Code during orientation?

Compliance Program Administration

- Board of Directors
  - Are Board members active in providing oversight for the compliance program? (Review minutes, assure compliance is on the agenda, timely reporting and escalation of issues)
  - Does the Board understand their responsibility? (Review board education materials, does the CO attend board meetings, conduct interviews)
  - Are Board members committed? (tone at the top, right culture)
- Compliance Budget
  - Has the compliance budget been approved by the Board?
  - Is the compliance budget sufficient to facilitate an effective compliance program?

Compliance Program Administration

- Compliance Committee
  - Are committee members active? (Review attendance records)
  - Are goals in place for the committee? (Review committee charter)
  - Are executive leadership engaged? (Review frequency of meetings, membership, agenda and minutes)
  - Leadership accountability (Are leaders held responsible for championing compliance?)
- Compliance Officer
  - Competency (appropriate certifications, professional development)
  - A Key Stakeholder (involved in strategic planning and due diligence)
  - Independent (structure should demonstrate independence, appropriate reporting structure to CEO and Board, authority to go to the Board)

Compliance Program Administration

- Staffing
  - Adequacy of staffing and resources
- Culture
  - Accountability (conduct surveys to determine if compliance department has an impact on your job, is there trust in the compliance department and leadership, etc..)
  - Are employees incentivized to make the right decisions?
- Accountability
  - Performance evaluations
  - Is compliance taken into consideration when promotions are considered?

Compliance Program Administration

- Risk Assessments
  - On ongoing risk assessments conducted? Are risks prioritized? Are work plans developed? Who was involved in the process?
- Legal Counsel's Role
  - How do legal and compliance work together?

Screening and Evaluation of Employees, Vendors and other Agents

- Exclusion Screening
  - Who has responsibility for exclusion screening? Are their job functions clear? Are monitors in place to assure accuracy? Are employees required to disclose exclusion status by policy? How often are exclusion checks conducted? Are employees screened prior to hiring? Are vendors screened?
- Conflict of Interest
  - Are COI forms audited? Has COI education been provided?
- Employee Accountability
  - Do employees understand what is expected of them? Are expectations clearly stated in performance evaluations and job descriptions?

Communication, Education, and Training on Compliance Issues

- Training
  - Types: General, risk specific/focused, onboarding, remedial
  - Training Plan: Who, What, When, Where and How
  - Is general compliance training mandatory?
  - Is all training documented? (sign in sheets, attestations, pre and post tests, etc..)
  - Is the effectiveness of training evaluated? (incident logs, hotline calls, employee behavior)
  - Has board training been conducted? How often? Who conducts the training?
  - Are vendors and volunteers given compliance program information?
  - Has a communication plan been developed?

Monitoring, Auditing, and Internal Reporting Systems

- Reporting System (What to Measure)
  - Accessibility, trust, response time, thoroughness of files, marketing of system
- Risk Assessments: What is the process?
  - Who participates?
  - How are topics prioritized?
  - What is the process?
  - How are mitigation steps determined?
  - Is education provided?
  - How are the results reported?

Monitoring, Auditing, and Internal Reporting Systems

- Monitoring and Auditing Work Plan
  - What is used to develop the plan? (risk assessment, internal and external forces, corrective action plans)
- Audit Process
  - Tracking attorney consultation
  - Relevant findings shared with Board
  - Who is accountable?
  - Are audit findings actionable?
  - Are audit results reported to operations and the complia

Monitoring, Auditing, and Internal Reporting Systems

- Corrective Action Plans (CAP)
  - Was a root cause analysis conducted? (audit documentation of root cause)
  - Did management complete the CAP?
  - Is there a documented follow up process to make sure management has completed items in the CAP?
  - Was the corrective action successful in correcting the deficiency?
  - Are follow up audits conducted? (review sample cases from start to finish)
- Auditors
  - Is a third party hired to audit the auditors? Assure auditors are independent.

Discipline for Non-Compliance

- What To Measure
  - Fairness and consistency
  - Approach to determining type of disciplinary action
  - Was the Compliance Officer involved in the recommendation? Who made the decision?
  - Thoroughness of disciplinary P&P and timeliness
- Awareness
  - Are employees aware of the disciplinary policies?
  - Is the non-retaliation policy being followed?
- Is there adequate documentation of the discipline applied?

Investigations and Remedial Measures

- Guidelines for Conducting Investigations
  - Are there guidelines in place to assure consistent investigations (review guidelines, policies and procedures on conducting investigations)
  - Is the investigative process effective? (transparency/not everything under A/C privilege, is the process documented?, what is approval process for external reporting?, are consultants/attorneys used as needed?)
  - Assure record retention plan is in place.
- Content of Investigation Files
  - Records are maintained
  - Quality of documentation (who, what, when and how)
  - Preservation of documents (assure retention period is followed)

Investigations and Remedial Measures

- Quality and Consistency of Investigations
  - Quality and effectiveness of investigations (Are investigators trained and independent?, legal collaboration, audit process to look at questions asked, involved parties and report)
  - Thoroughness, timeliness and consistency (audit outcomes
- Tracking and Trending Investigations
  - Documentation review and audit tracking system
  - Audit investigations log (Are there supporting files?)
- Escalation of Investigations
  - Ensure adequate and timely escalation of outcomes
  - Significant investigations are reported to the Board and senior leadership

Measuring Effectiveness (HEAT/OIG)

- Develop compliance program with benchmarks and measurable goals.
- Set up a system to measure how well you are meeting those goals.
- Involve the Board in creating the program and regularly update the Board regarding compliance risks, audits, and investigations.
- If one or more goals are not met, investigate why and how to improve in the future.
- Assess whether the compliance program has sufficient funding and support

https://www.oig.hhs.gov/compliance/provider-compliance-training/files/OperatinganEffectiveComplianceProgramFinalBR508.pdf

Resources

- Measuring Compliance Program Effectiveness: A Resource Guide, HCCA-OIG Compliance Effectiveness Roundtable, January 17, 2017

- U.S. Department of Justice, Criminal Division, Fraud Section, Evaluation of Corporate Compliance Programs

- Practical Guidance for Health Care Governing Boards on Compliance Oversight, OIG, U.S. Department of HHS, AHIA, AHLA and HCCA