

Complete Healthcare Compliance Manual

Discipline and Incentives

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There are numerous ways in which the compliance function can demonstrate that it is operating effectively. A well-designed disciplinary policy with documented enforcement that is fair and consistent is a key component of an effective compliance program. In a similar vein, incentives can drive human behavior toward compliance. The OIG's seven elements of an effective compliance program include publicizing and enforcing disciplinary processes. DOJ Criminal Division, in its June 1, 2020, *Evaluation of Corporate Compliance Programs* guidance states that "another hallmark of effective implementation of a compliance program is the establishment of incentives for compliance and disincentives for non-compliance."^[3]

Discipline

Disciplinary policies for violations related to an entity's compliance program demonstrate to employees that unethical conduct will not be tolerated. The policies also demonstrate an entity's good-faith effort to be compliant to regulators in the industry. To be effective, the disciplinary process must be consistent and fair regardless of who violates policy. The compliance function does not necessarily need to own the disciplinary policy, as it typically resides within human resources, but the compliance function should validate that the policy is enforced with an emphasis on fairness and consistency. The disciplinary policy often represents the final step in a compliance investigation that is performed with independence and objectivity. The policy should be known by the workforce to exist with examples of action that will be taken for various types of violations. This is known as progressive discipline. In other words, for discipline to be effective, the policy should be publicized to the workforce. Discussions related to discipline should extend to nonemployed providers and third parties. While a medical staff committee may be responsible for provider disciplinary action, a vendor may be held accountable for violations as part of contract language. An entity will often have a related nonretaliation policy and an anonymous hotline for reporting incidences of policy violations.

Disciplinary measures address wrongdoing by a member(s) of the workforce, while incentives are often used by the entity to prevent wrongdoing in the first place. Incentives can drive employee change and set the tone for a culture of ethical behavior.

Incentives

The different aspects of using incentives include personnel evaluations; considering compliance in promotions; compliance input in developing and assessing all incentive and reward systems; rewards and recognition for those employees and managers who show compliance leadership; and rewards and recognition for the compliance staff.

The Department of Health & Human Services OIG has provided guidance to the healthcare and pharmaceutical industry on what it expects to see in compliance programs. In 2003, focusing on the pharmaceutical industry, the OIG included elements of incentive systems.^[4] In describing the minimum expected elements, the office referred to "written policies, procedures and protocols that verbalize the company's commitment to compliance (e.g., by including adherence to the compliance program as an element in evaluating management and employees)."^[5]

Elsewhere the guidance explains that “adherence to the training requirements as well as other provisions of the compliance program should be a factor in the annual evaluation of each employee.”^[6] It even went so far as to suggest that “pharmaceutical manufacturers may also consider rewarding employees for appropriate use of established reporting systems as a way to encourage the use of such systems.”^[7]

Whatever the government or other bodies may advise, however, the ultimate question for any compliance initiative is whether it actually works. Does it help in preventing misconduct and leading employees to act ethically and legally? To this point the late management expert, Peter Drucker, offered a succinct answer:

[C]hanging habits and behavior requires changing recognitions and rewards. People in organizations, we have known for a century, tend to act in response to being recognized and rewarded—everything else is preaching....The moment they realize that the organization rewards for the right behavior they will accept it.^[8]

This conclusion was also well expressed by Stephen Cutler, Director, Division of Enforcement of the SEC, in advising companies on how to set the right tone at the top:

[M]ake integrity, ethics and compliance part of the promotion, compensation and evaluation processes as well. For at the end of the day, the most effective way to communicate that “doing the right thing” is a priority, is to reward it. Conversely, if employees are led to believe that, when it comes to compensation and career advancement, all that counts is short term profitability, and that cutting ethical corners is an acceptable way of getting there, they’ll perform to that measure. To cite an example from a different walk of life: a college football coach can be told that the graduation rates of his players are what matters, but he’ll know differently if the sole focus of his contract extension talks or the decision to fire him is his win-loss record.^[9]

The point is simple and intuitive—people tend to do what gets rewarded. This is how organizations communicate what management values most highly. Employees look to see who gets promoted and who gets passed over, who gets the bonus and who is ignored. The use of rewards is one of an organization’s most effective communications tools. The stories of who are the heroes and what conduct leads to advancement become part of the culture of an organization.

Indeed, given the prevalence of reward, evaluation, and incentive systems in organizations, it would be difficult to conclude that this was anything other than an essential tool. If bad actors or those with questionable ethics are rewarded and promoted, the tone at the top of the organization and the culture throughout the organization will likely lead to similar behavior at all levels of the organization. By contrast, if those who champion compliance and ethics are selected as leaders and are seen by other employees as being rewarded and recognized, that then becomes the model for success in that organization.

Personnel Evaluations

There are many reasons for using incentives in programs. One way is through the inclusion of compliance performance in employees’ assessments and evaluations. In this process, the employee’s performance evaluation includes elements related to compliance. Because most major companies use written evaluation forms, this would mean inclusion of this point in these forms. For those companies that use other forms of assessment and feedback to employees throughout the year, this same analysis would apply.

What is it that would be assessed? This assessment does not usually attempt to measure one's intrinsic virtue or personal sense of values. Instead it measures the employee's leadership actions in promoting the company code of conduct and ethical business practices. The process involves measuring the application of management skills to achieve an objective, that is, promoting the code and the compliance program.

See the **Resource: Sample Evaluation Form** after this article, which includes a list of these factors.

Examples include the following:

- Uses the code of conduct and encourages subordinates to do the same
- Actively takes steps to implement the compliance program and the code of conduct
- Attends appropriate compliance training, and makes sure subordinates get appropriate training and know the rules that apply for their jobs
- Is willing to challenge questionable conduct or proposals

Note that this evaluation can address performance related to the compliance and ethics program in general and/or the program as it deals with specific risk areas, such as the False Claims Act (FCA), environmental compliance, or safety.^[10]

Once a company has decided to include this point in assessments, there are a variety of ways to proceed. The simplest is a checkoff item on the form. An example would be the following:

- Has this employee supported the code of conduct and acted ethically in business decisions? Yes/No

This has the advantage of covering the point and making the process fairly easy for the supervisor. It may serve to remind employees that compliance and ethics are important to the organization. But this simplicity may also tend to make the process rather perfunctory, a "tick and flick" exercise in which the supervisor ticks the yes answer and quickly flicks the page to the next item. If this occurs, it may breed skepticism among employees. One way to limit this risk is to require that the evaluator identify something specific that is the basis for the score. This helps ensure that the evaluator is more engaged and makes the assessment more reviewable.^[11]

A more nuanced approach would include specific factors and require a rating drawn from a range of scores, perhaps 1–5, with 1 being poor and 5 outstanding. Taking this a considerable step further, the form could include specific management objectives as part of the rating. For example, a manager might have goals that include having all subordinates complete the compliance training and achieving a high score regarding ethics and compliance in 360 reviews. The use of 360 reviews, in which an employee's colleagues above, below, and at peer level are surveyed about that employee, is one way to cover the less quantifiable aspects of these evaluations.

Setting specific compliance goals for managers has substantial advantages. It can lead managers to think more realistically about the importance of management leadership in promoting the code of conduct and the compliance and ethics program. It can provide specific objectives for management to focus on rather than using vague or undefined terms. It also acknowledges the direction of the Federal Sentencing Guidelines that "high-level personnel of the organization shall ensure that the organization has an effective compliance and ethics program."^[12] Promotion of the program is not a function that can simply be delegated to one compliance and ethics officer. Of course, even with such specific goals, the managers should still also be evaluated on how they achieve their other goals, that is, ethically or by improperly cutting corners.

Once the detail on this step is set, the next question is the rating or value to be assigned. How important is this

element in the employee's overall evaluation? The simplest is the "check the box" approach, with no special value assigned. It is on the form but left up to the supervisor's discretion how to count it. In companies that want to emphasize the priority of this area, however, they may set the compliance and ethics rating as a threshold for achieving one's bonus or as a percentage gateway. For example, the employees who receive 5 get 120% of bonus, those with 4 get 100%, and so on. It could also be assigned a percentage value, perhaps representing 20% of the employee's total evaluation.^[13]

At Catholic Healthcare West, business unit leaders are rated on 25–30 elements tied to the Federal Sentencing Guidelines standards for effective compliance and ethics programs. Their rating in these categories acts as a threshold for determining eligibility to participate in the incentive program each year. However, rather than setting a minimum, it has evolved into a competitive element, with those who are subject to the rating trying to surpass one another.^[14]

Whatever approach is adopted, there are some important cautions to consider in this effort. One should never assume that attempts to alter the evaluation process will go smoothly or that supervisors will approach this evaluation the way intended. For many supervisors, assessment of subordinates is considered one of the more difficult parts of their jobs. If there is a way to ease the process and get it done more quickly, there will be a strong temptation to find a shortcut. It is necessary, therefore, to check how these assessments are being done, including auditing, testing, and monitoring the process.

Part of executives' and managers' responsibilities should include monitoring how well subordinate supervisors are doing such assessments. For example, if the CEO wants to take an active role in the compliance and ethics program, he or she could start this process at the executive level and then discuss with the other officers how they will rate their direct subordinates. Each supervisor down the ladder could then be charged with the same monitoring responsibility. In fact, the evaluation of any supervisor should take into account how well that supervisor, in turn, used the evaluation of subordinates to promote the compliance and ethics program.

As part of the monitoring process, it should be made clear to all supervisors that it is unacceptable simply to give every subordinate the same perfect rating. Since all employees typically do not perform all tasks at the same level, it is highly unlikely that all would show the same level of commitment and leadership in the compliance and ethics program (i.e., everybody cannot be "above average"). But expect resistance on this matter; there will be some supervisors who insist all their subordinates are ethical and therefore deserve perfect ratings. This misses the point. The employees are not measured on their personal values, but on how they exercise leadership in creating an ethical work environment. To facilitate this evaluation process, there should be training and reminders for supervisors and modeling of the proper way to conduct these assessments by senior managers.

Once supervisors have been won over, there should then be occasions where employees' ratings reflect weakness in compliance and ethics leadership. At this point there needs to be follow-up on all negative compliance assessments. The assessment system should require remediation plans for those with weaknesses in this area. For example, such plans would be mandatory for those with ratings below a certain level. Of course, the fact that such plans are required and will thus require more work by the supervisor will create the incentive never to give a poor rating; management will have to take a strong position and supervise the process in detail to prevent this outcome.

Input on Promotions

One of the purposes of employee evaluation systems is to identify candidates for promotion to positions of increasing authority. One way for organizations to show the government and its employees that they are committed to compliance is to set a minimum standard for the compliance part of an employee's assessment in

order to be considered for promotion. For example, if compliance and ethics has a 1–5 scale on employees' evaluation forms, perhaps only those scoring 3 or above would be eligible for any promotion. Organizations can also go the next step beyond this and make compliance an explicit factor in determining promotions. While satisfactory ratings could still be a threshold, the overall evaluation of those eligible for advancement would include a thorough review of the candidate's record as a leader in compliance. Organizations wanting to ensure that this approach moves beyond form into substance, and also seeking to fully empower the compliance function, can set a requirement that the compliance office have input into the organization's promotions. This would certainly be an indication of due diligence in determining promotions.

Although preventing the promotion of bad actors is an important objective, there is an additional step a company can take to promote compliance as part of its culture. Some companies engage in succession planning or the identification of high-potential employees. They use various processes to identify and encourage employees considered to be likely candidates for future leadership positions. If in fact compliance is an important value to the company, then that element should be included in this process. Those interested in being selected for this special treatment should know that a strong compliance record and commitment are positive factors that will be considered.^[15]

Employee Rewards and Recognition

In addition to paying employees for doing their assigned tasks and providing the usual annual reviews and bonuses, organizations frequently offer employees special types of rewards and recognition. These may include rewards such as travel, cash prizes, small token gifts, or letters of appreciation. These rewards and recognition help make up the culture of an organization; employees frequently mold their behavior based on who gets rewarded and who does not. As Deal and Kennedy observed in their groundbreaking work on corporate cultures, "Culture-shaping managers...seek ways to provide frequent and visible praise or other recognition for even modest contributions to the service of important values."^[16] Those who are recognized can become the heroes and part of the stories of the organization's history.

How should rewards be integrated into the compliance program? In many organizations, there is an existing system of rewards. A company may have a high-profile chairman's award for special contributions to the company. Compliance can be integrated into existing rewards by adding compliance-related factors into the criteria for these rewards. This helps remind employees that compliance and ethics are valued and that they are a part of everything that matters in the company. Rewards may also be provided specifically for contributions to the compliance program and for those who show leadership in promoting the code of conduct.

Rewards and recognition are powerful tools. Even in companies that have not otherwise offered these, it is worth considering them to promote the compliance program. Employees are likely to remember the fact that meaningful recognition was given for leadership in this area. If an employee is ever asked by the government about the company's compliance program and its code, the person is very likely to respond with the story about the awards dinner. Such outstanding recognition will be part of the stories employees recount to new employees at the company. When done right, it can be one of the surest ways to affect the culture in an organization.

Often compliance involves activities such as investigations, audits, and discipline that are not always well received. Even requiring employees to attend training may not be a happy experience. But the area of rewards and recognition is one that can be positive and benefit from imaginative approaches. There are numerous ways to provide recognition. Perhaps the easiest and least expensive is the recognition letter from a senior executive, such as the CEO or the compliance officer.

In one company, for example, a marketing manager received in the mail an unmarked envelope with her name

on it. When she opened the envelope, she realized it contained a competitor's proprietary planning information. She quickly closed the envelope and contacted the legal department. For this ethical act, the manager received a glowing letter from the chief compliance officer, with a copy to her supervisor. A speaker from Boeing has recounted a similar story, with the hero also being written up in a company newsletter. In yet another example, a company CEO is reported to have charged his officers to bring him specific examples of employees who demonstrated model behavior; he, in turn, sent these employees personal commendation notes.^[17]

For an example, see the **Resource: Sample Recognition Letter** after this article. Perhaps an even more powerful variant on this method is to deliver the letter personally and read it to the employee. This approach, which has been described as a "gratitude visit," can have an impact on both the recipient and the person delivering the message.^[18]

What other awards and recognition can be given? One starting point is to consider anything that is used in the company for recognition for any purpose—cash, certificates, time off, lunches, etc. But beyond this, the possibilities are endless. For example, the Case Study sidebar includes a list of ideas taken from training sessions for compliance professionals; within 15 minutes, working in teams, they were able to come up with numerous clever ideas. For those who would like a source of ideas to get the thinking process started, there is an entire book, *1001 Ways to Reward Employees*, which can help with this process.^[19]

Case Study: Ideas for Using Incentives in Compliance Programs

HCCA and SCCE Academies' Classes: Building Incentives in Your Compliance & Ethics Program

The classes were divided into four teams, with each team asked to develop its best ideas related to incentives, evaluations, and rewards. The other teams then judged each presentation. Some editing has been added, including changing industry-specific references so that they apply more generally. It is hoped that this list will inspire more ideas from readers. While listing these does not mean we endorse them all, any particular idea might inspire the reader to develop an approach that will be perfect for his or her own circumstances.

- Departments would nominate people who exemplify the integrity program; a board level committee would select the best and give the winner free, preferential parking for a year.
- Provide as a reward a pin or other visible emblem. When the employee accumulates enough points, they can turn in the emblem for gifts or time off.
- Rewards could include two season basketball tickets or free lunch passes.
- Have a "dinner with the CEO" as recognition.
- Have the annual compliance and ethics award winner flown in to the shareholders' annual meeting with the award presented there.
- Audit findings should include positive findings regarding compliance & ethics

activities; these could be shared in a newsletter.

- The compliance committee could select the department or work group that best exemplifies compliance & ethics. Measures could include such things as completing training on time, code of conduct attestations done on time, best personnel evaluations, etc. The reward could be a lunch for the department.
- Those managers with the best compliance & ethics records could be awarded free tuition and expenses to attend a compliance academy and/or to get certified in compliance & ethics.
- Make compliance & ethics certification (CHC, CCEP) a condition for promotion to senior management positions.
- Reward employees for making recommendations and suggestions to improve the compliance & ethics program. This also brings in new, creative ideas.
- Provide rewards and recognition for those who conduct self-audits and share the findings and lessons learned.
- Require a compliance comprehension test as an adjunct to regular annual evaluations. A 100% score would be an added 1% pay increase on top of the usual incentives. 80% = .8, 70% = .7, less would equal zero.
- Provide an incentive for reports to the helpline or otherwise to the compliance and ethics office that help avoid noncompliance or identify actual problems that are system errors. This would only be for reports about systems, but not about people, to avoid a bounty-hunter environment.
- Make attendance at compliance training a condition for being in any responsible position.
- Award organization-wide recognition if the compliance & ethics program overall gets a high score, e.g., time off for all employees.
- Provide an incentive for all division and unit compliance and ethics officers to get training and certification (CHC, CCEP).
- Performance indicators could be linked to a compliance plan. This could include timely submissions of required regulatory filings, on-time completion of compliance training, etc.
- Provide on-the-spot recognition by peers/ supervisors with certificates (compliance bucks) for behavior promoting compliance and ethics that can be redeemed for company merchandise.
- Give \$50 for any submissions to the company newsletter relating to compliance and ethics that are published.

- Have a compliance and ethics courage award, e.g., for turning down a choice vacation trip from a vendor.
- Have a system for compliance & ethics points or “president’s points” in small incremental amounts awarded based on performance during the month, quarter or year. The points would be totaled for each time period, with recognition for those receiving a certain number of reward points.
- Senior leaders ask employees compliance and ethics questions on the spot; those who answer correctly get free movie tickets.

It is important to remember, too, that when it comes to recognition, even very small rewards can have a big impact. For example, immediate recognition, or “spot rewards” even involving small amounts, given on the spot for positive compliance performance, can be a useful addition to the methods used to promote the program.^[20]

One other variant to consider for giving rewards is the recognition of entire work groups. This has the benefit of demonstrating that the company values compliance, but with an added kick—it can harness the enormous power of peer pressure. For example, if the company offers a free lunch to the work group that completes the code training first, this can make it almost impossible for one employee to hold out, lest he or she cause the entire group to miss out. This result can be achieved with even very small rewards for the group’s members.

Compliance Staff Rewards and Recognition

How are the champions of compliance and ethics treated? What is their record when it comes to salary, bonus treatment, promotion, and other recognition? Is the compliance office where almost-retired loyal workers are put quietly out to pasture, or is this a function that really matters? How the compliance staff members are treated will be read by employees as an essential sign of their importance.^[21]

The message here is that the company should treat its compliance staff well. If the company is serious when it talks about integrity being its first value, if it intends to follow the gold standard for its program, if all of this is more than mere lip service, then its money should be behind its words. The financial treatment of the compliance officer and staff should communicate clearly that this is an important function that the company values highly. Words alone will not do this; actions will. On the other hand, there should be some caution exercised in determining how to reward the compliance staff; it is best if incentives are decoupled from objectives and benchmarks that would call into question the compliance and ethics staff’s objectivity.^[22]

Companies should also consider whether compliance is a path for promotion in the company. If compliance really does matter, then service in that area should be considered a positive factor in selecting people for promotion. A stint in the compliance program would become a ticket that needs to be punched for those who want to get ahead in the company.

Companies may also consider establishing a career path for those who do compliance and control-related work. A route for advancement, combining paths in human resources, internal audit, environment, health and safety, legal, compliance headquarters, and compliance fieldwork and related functions could be mapped out for those who are interested.^[23] Companies can also focus on the achievements of the compliance staff, singling out the top performers for special recognition.

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