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our 15,000th member

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COMPLIANCE 101

The seven essential elements, Part 5: Reporting & investigation

- » Diverse personality types, comfort levels, and belief systems may determine how an employee prefers to report a problem or concern.
- » Offering several reporting channels may increase the number of problems or concerns reported.
- » Onsite visits and regular communication may improve comfort levels of employees, thereby increasing the number of problems or concerns reported.
- » Investigating reported problems or concerns reinforces the compliance message that reporting is encouraged.
- » Employees participating in investigations may become more cognizant of the compliance program and decide to identify their preferred reporting channel.

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Impressive, the compliance program is evolving. The board of directors, senior leaders, compliance officer (CO), and compliance team are engaged. Routine education, auditing, and monitoring programs are established, documented, and have routine schedules. Awareness is increasing and the corporate culture is gradually incorporating compliance into operations.

Although the program seems established, the hotline is not demonstrating significant activity. From another perspective, the CO and compliance staff are receiving direct calls from internal and external business partners. Is there a problem if one reporting channel

experiences higher volume than another channel? Fluctuating activity levels between reporting channels does not necessarily represent a problem. Analyzing activity levels may provide information to gain an understanding of the corporate culture. This information helps to identify methods that require attention and/or adjustments.

Reporting

Employees may use a variety of methods to report potential problems or raise concerns.¹

It is important for organizations to offer and promote as many methods as possible. Employees are diverse. They have different personality types, traits, comfort levels, and belief systems driving their behavior. Offering different reporting methods allows employees to report problems and concerns using the channel that feels most comfortable to them.



Weinstein



Hart



Johnson

One segment of reporting includes accommodating employees in order to obtain information that may protect the organization. Another segment of reporting includes protecting employees by fostering a culture that ensures there will be no retaliation for reporting a problem or concern.² Employees want to feel stable and secure. Additionally, they want to feel confident in their decision to report. This is where the non-retaliation policy is most effective. A trait that plays a role with some employees is insecurity and lack of confidence. Insecure or non-confident employees may want to avoid the feeling that their report could demonstrate a lack of industry knowledge, a misunderstanding of the organization, or even misunderstanding the reported problem. Additionally, an employee may want to avoid causing an unnecessary problem.

Employees differ. According to Myers-Briggs, psychological differences consist of four opposite pairs, or dichotomies, resulting in 16 possible psychological types. The four dichotomies are extraversion/introversion, sensing/intuition, thinking/feeling, and judging/perceiving.³ For example, an extravert enjoys frequent interaction and receives energy by being with people. An extrovert employee may prefer an in-person visit to the CO's office to talk through a problem or concern.⁴ From another perspective, an introvert employee may prefer an anonymous call to the hotline or prefer placing an anonymous tip in a suggestion box. Opposing arguments surround the Myers-Briggs approach and of the frequently used exam.⁵ The intention of the authors of this article is not to provide an analysis of each dichotomy and psychological type; rather we recommend consideration of personality types when determining reporting methods for your organization.

Although available resources may influence the structure and available reporting channels, consideration of psychological types

is vital. COs or organizations must avoid developing one reporting channel or steering employees to the channel that leadership believes is the best one. In doing so, employees may feel neglected and reporting may be delayed or not occur at all.

In a recent Society of Corporate Compliance and Ethics article,⁶ Joseph Murphy shares his experience of an investigation where an employee had pertinent information to assist with resolving an investigation. Murphy and his colleague had discussions with other employees prior to identifying this employee. When Murphy finally met with the employee, his response was, "I was waiting for you to call." This a perfect example of the need for establishing multiple reporting channels.

COs are not solely responsible for creating a culture that encourages employees to report issues and concerns; however, an empowering culture should be a priority of the CO. Murphy states, COs must have a presence outside of their office. When reporting a concern, employees must believe there will be a review and no retaliation. There are multiple approaches to establishing and maintaining employee confidence in the process. One approach is the "open door" policy and another is conducting site visits.

Does it matter whether the CO, compliance staff, compliance hotline, or suggestion box are receiving equivalent activity? The authors believe it is more important to have multiple reporting channels with fluctuating volume than limited channels with steady volumes.

A CO who receives more calls than the hotline may indicate that employees believe contacting the CO directly results in action. If the compliance staff receives more calls than the CO, it may indicate that employees trust the staff to report the problem confidentially to the CO and, if applicable, to follow-up with results. If a hotline receives more calls than the CO and compliance staff, it may indicate

employees prefer the anonymity of the hotline. Regardless of the reporting method, all problems require the due diligence of an investigation to prevent potential harm.

Methods of reporting

As mentioned above, people respond according to their personality and will select the most comfortable reporting method. Although companies should offer several reporting mechanisms, budgetary constraints may limit the offerings. A hotline that is managed by an external company can be expensive, depending on the volume of calls and the amount of detail desired in reports. An external company that manages a hotline can be contracted to simply accept calls, classify the calls into priority levels, and provide a written monthly report. Alternatively, an external hotline management company may prepare dashboards, real-time reporting for highest priority claims, and contact authorities in the event of a claim of physical abuse. A detailed contract is recommended for cost control.

The company should create a policy that describes the hierarchy of reporting methods, beginning with a report to the employee's direct supervisor, and moving up the chain of command. Suggestion boxes are common, but many misconceptions surround their use: (1) Is someone watching the suggestion box? (2) Are cameras focused on the area? (3) Will handwriting be recognized? (4) Does anyone actually read the suggestions? Electronic suggestion boxes can be perceived as suspicious. Can the claim be traced back to the claimant? Although it is recommended that employees initially report through their chain of command, no method should be discouraged.

Typically, external hotline companies send the hotline report to the CO. Others who may receive the report are Human Resources (HR) or the Legal department. The CO should implement alternate methods to handle situations

where the offending party is the supervisor, HR staff, or even a member of the Compliance department. Anonymous hotlines are usually the best method for reporting these situations. Hotlines provide the best method for anonymous reporting and are perceived as the least likely method to result in retaliation.

The CO should monitor the effectiveness of each type of reporting method. Calculate volumes by month, quarter, or year, and compare them to prior periods. Analyze classifications of claims. Are most claims essentially HR issues (employee unhappy with some action taken by his/her supervisor), or are most claims targeting suspicious billing methods? Finally, the CO should monitor the investigation process and outcomes. Are most claims unsubstantiated? If most are unsubstantiated, what is the underlying cause that prompts the claims? The CO should educate employees on proper use of the hotline. Employees who understand the reporting policy, are engaged and empowered to utilize the hotline appropriately, and believe their company is ethical will help drive the corporate culture towards doing the right thing all the time.

Investigations

When conducting investigations, review documentation such as procedures, forms, spreadsheets, and other executed activities. The investigation should include engagement of the individuals who will help provide relevant information. When engaging these individuals, the discussions should occur in person or by telephone. The investigator should begin by reassuring the person that no prejudgments have been made; the investigator is seeking the truth, and misconduct will be handled according to company policy. The person responding to the investigator should be confident that all responses will be confidential to the fullest extent possible.

A new CO may be required to report on current investigations. Where should the CO

begin? One clear way to start is to inquire about the nature of current investigations and review investigation activity notes. Request copies of past investigations and refer to them to set the groundwork for your investigation notes. As you complete this process, you will be able to ascertain whether or not your resolution is sufficient to adhere to regulatory guidelines.

It is imperative to maintain pristine records of investigations. It is also important to provide feedback to all complainants. Often, assuring the complainant that an investigation is underway and providing an expected timeline for completion will appease the complainant.

As the CO, you should become familiar with “hot targets.” The CO should begin by becoming familiar with past investigative reports issued by accrediting agencies on the local, state, and federal level. In addition, review the Annual Work Plan published by the Department of Health and Human Services (HHS) Office of the Inspector General (OIG). The OIG also issues fraud alerts. Active participation on Health Care Compliance Association (HCCA) online discussion boards is an excellent way to discover hot targets.

Next, consider reviewing compliance with regulations for a particular process or department within your organization, such as security management, workforce security, or the Pharmacy department.

Security management

Complete a risk assessment of potential risks and vulnerabilities related to confidentiality, integrity, and availability of electronic protected health information (ePHI). Although the Health Information Portability and Accountability Act (HIPAA) Security Rule does not require entities to purchase particular technology, your organization may find that new hardware, software, or services are necessary to adequately protect health information.

Workforce security

Implement policies and procedures to ensure all members of your organization’s workforce have appropriate access to ePHI. Appropriate access includes limitations for workforce members who should not access ePHI. Visit the websites of the OIG and the Office for Civil Rights (OCR) for information on appropriate access (<http://1.usa.gov/1cnZW7f>).

Pharmacy department

Review previous audits and verify the effectiveness of the actions implemented. Design an audit to identify the presence of common pharmacy errors, such as: (1) name tags that clearly identify a pharmacy technician vs. a pharmacist, (2) supervision of technicians by the pharmacist and proper labeling of medications on shelves, including the number of pills remaining in the bottle, (3) accuracy of records for controlled substances, (4) Schedule II inventory and dispensing records separate from Schedule III-V records, and (5) evidence of biennial inventory. These and other common pharmacy errors can be found online at <http://bit.ly/1dfASK7>.

Conclusion

You have come a long way from your first day as CO and can feel confident that your organization is progressing towards the fulfillment of an effective compliance program. The key is impeccable recordkeeping, consistent follow-up, and your team of professionals working together to establish a process where investigation findings are real, necessary, and making a difference for your organization.

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4. Dan Buettner: “Are Extroverts Happier Than Introverts? Insight into differences between two personality types.” *Psychology Today*. May 14, 2012. Available at <http://bit.ly/1HnBgrdh>
5. Joseph Stromberg: “Why The Myers-Briggs Test Is Totally Meaningless.” *Vox*. July 15, 2014. Available at <http://bit.ly/11HDDre>
6. Joe Murphy: “I’ve been waiting for you to call.” *The Last Word, Compliance & Ethics Professional*. December 2014, page 90.