

MEDICARE COMPLIANCE

Civility, Culture Tie into Compliance; Regulations Are Not End Point

At one company where the compliance program won multiple training awards, the compliance officer was shocked to learn that senior executives were corrupting his good work. They required their administrative assistants to take compliance courses for them and check the box indicating they were completed. Bothered by the duplicity, an administrative assistant informed the compliance officer, who wondered about the implications for his organization that executives were flouting a core compliance requirement and falsifying their attendance.

At the heart of his concern was whether employees, including senior leaders, are held accountable in their organization for the things they do wrong — and for their successes, said Tucker Miller, vice president of ELI Inc., in Atlanta. "We give it lip service, but what does it really mean?" she said. "You have to peel back the layers of what doing the right thing means."

The answer requires compliance officers to look more expansively at their organization's culture and civility, Miller said at a recent webinar sponsored by the Health Care Compliance Association and Society for Corporate Compliance and Ethics. "It's not just about following the law. It's looking at a larger whole," she explained. Culture and civility are embedded in compliance. How do people treat each other? What is their behavior and are they held accountable for it? Are people solving problems in a constructive way? "Respect and inclusion are not just around Equal Employment Opportunity and Title VII compliance. They create values that support communication and enable all of us to identify issues and resolve them quickly."

When compliance professionals think about bad behavior, they usually mean behavior that violates the law or policies and procedures. "But from a cultural or civility standpoint, it's all the other stuff that gets in the way — things that cause us to withhold our ideas and that impact our level of compliance," she said. It's helpful for compliance professionals to think about ways they can "positively influence their corporate culture" beyond laws, policies and procedures.

And not every mistake or violation will be neutralized by a policy or regulation. For example, in a recent HIPAA settlement, the Office for Civil Rights (OCR)

imposed a \$239,800 civil money penalty (CMP) on Lincare, Inc., for violating the HIPAA privacy rule. Lincare furnishes respiratory care, infusion therapy and medical equipment to in-home patients and has more than 850 locations in 48 states. OCR says its investigation got underway after someone complained that a Lincare employee left documents with protected health information (PHI) of 278 patients in an old residence after moving.

"Over the course of the investigation, OCR found that Lincare had inadequate policies and procedures in place to safeguard patient information that was taken offsite, although employees, who provide health care services in patients' homes, regularly removed material from the business premises," OCR says. Lincare contended it didn't violate HIPAA because the PHI was stolen, and sought to have the case dismissed on summary judgment. Miller said the administrative law judge (ALJ) questioned Lincare about its policies on protecting PHI, and its compliance officer said something to the effect of how "the company considered having a policy saying 'thou shalt not let anyone steal your PHI,'" which "the judge didn't consider a serious response," according to published reports on the case, Miller said.

"One of the dilemmas here is that even when there may have been an attempt at oversight on their part through policies, the compliance officer threw up her hands and basically said 'it's one thing to have rules, but we can't have a rule for every situation,'" Miller said. "It demonstrates a key issue for all of us in compliance. If it were as simple as following rules, everything would be easy. Human behavior makes it difficult to address just with rules." The ALJ upheld the CMP in February (RMC 2/8/16, p. 1).

Four Ideas for Improving Workplace Civility

Here are some of Miller's suggestions for improving civility in the workplace, with the goal of fostering a culture of compliance:

(1) *Make civility, in addition to compliance, "a core commitment and strategic objective."* Miller said rather than compliance officers and other people having a single-minded focus on being masters of the rules in a constantly changing regulatory environment, they

can also focus on civility, she said. That will help leaders stay out of trouble and achieve their business results. For example, at one company, Miller was astounded to see that turnover on the sales force was one of the seven risk areas identified by a publicly traded company. It showed the company knew something was off about morale or its culture. "I have never seen it identified as a risk factor," she said. "It indicated the company was concerned whether it could continue to retain and attract qualified salespeople."

(2) Engage leaders to model and convey standards. "You want leaders to be ambassadors of culture," Miller said, promoting professionalism and open dialogue with employees (e.g., sharing examples of their experiences as leaders and enforcing non-retaliation policies).

(3) Don't back down because powerful people seem untouchable. "Many people make the mistake of thinking training changes behavior. Training is a way of communicating standards," she said. "But how do we hold people accountable and recognize people for the right thing? And are we prepared to call people out respectfully and civilly and identify places where behavior is costing us? People say we can't touch this manager because they are a real revenue driver, but when you step back and see what the person costs you in terms of turnover

and disruption, they may not produce enough revenue in terms of costs" (e.g., employees quitting, lawsuits).

(4) Work with multiple departments to bring about change. "We can't individually focus on compliance initiatives and training initiatives and miss the opportunity to leverage behavioral change," Miller said. "This may be the place you may want to have a cross-functional team to strategize for your organization." Compliance can't solve problems on its own — it can't have a rule for everything — but it can bring together other departments, such as quality, case management, finance, billing, health information management, IT and human resources, to develop solutions and foster culture change.

And don't get distracted by the "curse of the bright and shiny," she said. Follow through is important. "I can develop and implement something, but do people understand the expectations so they can change their behavior? It's often the part people are afraid of — measuring outcomes — because results may not turn out the way they expect." If things turn out differently than expected, and compliance officers and operational people have to redesign the program, they shouldn't dread it. "That's half the fun."

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