

The seven pillars of an effective ethics and compliance program

By Nick Ciancio

Editor's note: Nick Ciancio is Senior Vice President, Marketing and Business Development at Global Compliance Services. He may be reached by e-mail at nick.ciancio@globalcompliance.com or by telephone at 800/876-6023.

Effective ethics and compliance programs are key factors in achieving a culture of integrity within your health care organization. In addition to establishing ethical and compliant behavior and regulating against noncompliance, these programs, as expressed by the Office of Inspector General (OIG), are “a major initiative in engaging the private health care community in combating fraud and abuse.”¹

What is the magic recipe for an effective ethics and compliance program? Every health care organization has its own customized plan, but if you look at the basis of each, you will find the Seven Pillars under every foundation.

So where did these seven elements come from? Did the ethics and compliance genie cast them from his lamp of gold? Not exactly. The Seven Pillars of an effective ethics and compliance program originated out of the formation of the U.S. Sentencing Commission (USSC) in 1984 by Congress in an effort to create enforceable, universal sentencing guidelines for comparable crimes.

After establishing Federal Sentencing Guidelines for Individuals in 1987, the formidable body sanctioned Federal Sentencing Guidelines for Organizational Defendants (Guidelines) in 1991, which apply to public,

private, not-for-profit, and government organizations convicted of federal crimes. Additional amendments were enacted in 2004 giving stronger credence to an effective compliance program, promoting a culture of compliant and ethical behavior, and exercising due diligence to prevent and detect criminal conduct.

This was a substantial mandate, considering corporate sentencing had been in complete chaos with almost identical cases being handled differently. The Commission realized the need to address the disparate sentencing and approached the development of guidelines with three objectives: (1) to define a model for good corporate citizenship; (2) to utilize this model to ensure corporate sentencing is fair by providing objective, definable criteria; and (3) to employ the model to create incentives for organizations to self-initiate crime prevention action.²

The Guidelines carefully defined, for the first time, that organizations would be subject to sentencing, fines, and periods of probation for federal offenses associated with antitrust, securities, bribery, fraud, money laundering, criminal business activities, extortion, embezzlement, conspiracy, and other felonious activities. The Guidelines also put the focus on an organization's managers and their behavior. But ultimately, the Guidelines were enacted to deter such behavior by addressing exactly what the punishments would be.

The other major innovation of the Guidelines was to encourage organizations to develop



their own mechanisms of prevention and reporting, defining seven elements for an effective compliance program.

Thus the creation of the Seven Pillars:

- 1. Standards and Procedures.** Crucial to a company's ability to create a culture of integrity is to communicate to employees the standards and procedures to which they should adhere. Organizations were urged to develop and distribute these standards and to further communicate their high importance. Today, these standards are commonly called an organization's Code of Conduct. They are the expression of expected behaviors, and often become a key element in the evaluation of employees.
- 2. Oversight.** In order to facilitate the program, it must have a strong leader. The second pillar requires organizations to designate a high-level employee to oversee all aspects of the program. This pillar created the position of compliance officer and even entire compliance departments or compliance committees within organizations, depending on their size and needs. Those with authority sometimes are the most likely to violate regulations and policies. The USSC recognized that fact and specified that due diligence was mandatory in the delegation of such authority.
- 3. Education and Training.** In addition to

developing and distributing the Code of Conduct, employees must understand it. The USSC wanted organization to do more than just have employees read a page of rules. They recommended ongoing training on the standards and procedures to encourage thorough comprehension.

4. Auditing and Monitoring. Organizations should employ a means to audit and monitor internal systems and verify compliance. This monitoring and reporting of findings should be administered by the compliance officer. Many monitoring practices can be used, but regular audits performed by either an internal or external auditors are recommended. These audits should focus on all hospital divisions, specifically relationships with third-party contractors and compliance in relationship to laws governing kickback arrangements, the physician self-referral prohibition, financial and accounting procedures, and Medicare, Medicaid, and other federal health care programs.

5. Reporting. To empower every employee as a member of the compliance team, organizations should create a reporting mechanism for employees to voice allegations or concerns without fear of retaliation. This standard has, of course, grown into an even stricter guideline with introduction of the Sarbanes-Oxley Act of 2002 that governs publicly traded companies. Today, many organizations utilize unbiased third-party vendors who offer anonymous telephone and Web site reporting for allegations of fraud, misconduct, and noncompliance.

6. Enforcement and Discipline. To set up these rules and standards there must be consequences and those consequences should be levied consistently regardless of the employee's stature within the organization. The Sentencing Guidelines state specifically that enforcement should be consistent with appropriate disciplinary action.

7. Response and Prevention. Finally, the organization must respond. Even with standards and procedures in place and an avenue for employees to voice concerns, progression and improvement will not occur unless the organization responds to the offense and continues to make concerted efforts toward preventing similar conduct.

The Sentencing Guidelines offer great benefits to health care organizations. If your organization finds itself in violation of regulatory laws or engaged in other felonious conduct, the sentence imposed or the fine charged could be reduced with an effective compliance program in place. In addition, OIG chronicles numerous benefits of an effective compliance program, most importantly, helping a hospital satisfy its promise to patients for excellent care, identifying internal weaknesses, providing a more precise view of employee behaviors, developing investigational procedures, promoting early detection of noncompliant behavior, and encouraging employees to take a role in the hospital's success by reporting misconduct in a safe, confidential manner.³

The Seven Pillars can also help you avoid a Corporate Integrity Agreement (CIA). With the passage of the Health Insurance Portability and Accountability Act (HIPAA) in 1996, a national Health Care Fraud and Abuse Program was established, which in turn caused more policing of the industry as well as investigation of allegations. In an effort for organizations to settle allegations of fraud and abuse with OIG, CIAs were implemented. These negotiated compliance obligations allowed organizations to settle claims and still remain eligible for Medicare, Medicaid, and other federally funded programs. CIAs are specific to each organization; however, most contain core competencies that echo the same elements of the Seven Pillars.

By following the Seven Pillars outlined in the Sentencing Guidelines and identified by OIG, organizations have a clear and discernible culture of integrity. By protecting your organization with a comprehensive ethics and compliance program, you lessen your chances of losing participation privileges in Medicare, Medicaid, and other federal health care programs. Being proactive and instituting an infrastructure of ethics and compliance is a solid investment in the future of your organization.

These guidelines provide a framework for health care providers to work within, crafting and customizing the program based on their specific needs. Regardless of your company's size or budget, the importance of an effective ethics and compliance program is too great to ignore. Taking control of your ethics and compliance program is simply seven steps away. ■

1. Office of Inspector General *Compliance Program Guidance for Hospitals*, Federal Register, Volume 63, Number 35, Monday, February 23, 1998.
2. Frank Sheeder, Esq. "Sentencing Guidelines: What the Health Care Industry Needs to Know," CCH Health Care, April 1, 2005, www.health.cch.com.
3. Office of Inspector General *Compliance Program Guidance for Hospitals*, Federal Register, Volume 63, Number 35, Monday, February 23, 1998.