Measuring and Benchmarking Compliance Program Effectiveness

Surveys Can Provide Clear, Objective Evidence of Progress

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One of the best, but least utilized, tools for evaluating compliance program effectiveness is the use of employee surveys; not just any surveys but tools designed to provide reliable, valid, and credible results. There are a lot of authorities that advocate their use in providing measurable evidence of how the compliance efforts of an organization are proceeding.

The U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) in its compliance guidance documents calls for benchmarking and evidencing compliance program effectiveness. Benchmarking and evidencing effectiveness are closely related concepts but are worth differentiating. The term effective, in its root and various forms, is used 19 times in the original Compliance Program Guidance for Hospitals. Anytime a government agency emphasizes a term or concept throughout a document you can be certain that the agency places a high value on such term or concept. On the other hand, the OIG calls for benchmarking the compliance program progress but provides only little guidance with regard to proper benchmarking techniques.

It is important to note that effectiveness is a term related to outcome and not process. Normally, process is measured in terms of output. For example, the number of employees trained on compliance is output. The degree that employees understand the lessons provided is a factor of outcome, or effectiveness. The same concept holds true when measuring the success of any element or factor of a compliance program.

With regard to benchmarking, the OIG cites only two methods as examples. The first method is with regard to claims processing, wherein it calls for establishing a benchmark for errors rates. It is suggested to track error rates over a period of time with the objective of reducing the rate of errors against the original and subsequent benchmarks. The second method relates to benchmarking the effectiveness of the compliance program through surveying employees. The results of the survey provide evidence of how well they understand the operations of the compliance program and their obligations to it.

This article will focus on using surveys to benchmark the progress and effectiveness of the compliance program. There are essentially two types of employee surveys to measure effectiveness of compliance efforts. The first type is a compliance culture survey that measures employees' perceptions and attitude toward the organization's compliance environment. The second type of survey measures employees' knowledge about the compliance program. These empirical tools can provide clear and convincing objective evidence of the progress and effectiveness of the compliance program.

The key questions related to utilizing compliance surveys are as follows:

- How important are surveys in evidencing compliance program effectiveness?
- Which is better, a compliance culture survey or knowledge survey, and what should be considered in making that determination?
- Should the survey be developed "in-house" or by a vendor?
- What kind of questions should be included in the survey and how many questions?
- How can the survey instrument be designed, tested, and validated?
- How should the survey be conducted?
- How reliable are the results?
- What value can come from survey results to improve the compliance program?
- How often should these surveys be used?

SURVEYS PROVIDE IMPORTANT EVIDENCE OF COMPLIANCE PROGRAM EFFECTIVENESS

In determining how seriously regulatory and legal authorities see employee compliance surveys, it is worth looking at the U.S. Sentencing Commission and the OIG in their guidance documents. The Sentencing Commission explicitly recognized the significance of "culture" in its 2004 amendments to the federal Sentencing Guidelines, stating that businesses must "promote an organizational culture that encourages ethical conduct and a commitment to compliance with the law."[1] This suggests that a compliance culture survey to evidence compliance meets this standard.

The OIG in its Compliance Program Guidance for Hospitals noted that "as part of the review process, the compliance officer or reviewers should consider techniques such as…using questionnaires developed to solicit impressions of a broad cross-section of the hospital's employees and staff."[2] In other compliance guidance documents, the OIG reinforced this by stating it "recommends that organizations should evaluate all elements of a compliance program through "employee surveys, management assessments, and periodic review of benchmarks established for audits, investigations, disciplinary action, overpayments, and employee feedback."[3]

Government and other oversight bodies are not the only ones who ask compliance officers for evidence of compliance program effectiveness. Increasingly, boards and executive leadership have been requesting the same kind of information. Now that compliance program development has been around since the 1990s, it is reasonable to have supporting authorities asking for evidence that the investment in the program is providing a return. Providing reports as to the number of hotline complaints handled, individuals and entities sanction screened, people who have undergone compliance training, et cetera is wearing a little thin. All these reports are process oriented leading to output measurement.

Effectiveness is a factor of outcome. The questions being asked frequently now are:

- How do we know the compliance program is working the way it should?
- What were the results from hotline and other reports of violations?
- Was the training provided effective in communicating compliance?
- Are we less vulnerable to liabilities arising from noncompliance?
- How are we able to evidence progress in our compliance efforts?

In response to all this, an increasing number of health care organizations are making use of employee culture and knowledge surveys. These surveys can be used to obtain quantifiable data on workforce knowledge and perceptions that can be applied by companies to benchmark and monitor progress against their own results (*i.e.*, trending historical company survey data) as well as possibly allowing for comparisons to industry peers and national averages. Compliance officers see that these approved and government-advocated tools are able to provide answers to the questions being asked of them. Additionally, an increasing number of board directors, given their oversight duties and personal exposure, are requesting such surveys be undertaken.

CULTURE VERSUS KNOWLEDGE SURVEYS[4]

Culture Surveys

The difference between "culture" and "knowledge" is commonly confused, and the terms are frequently and erroneously used interchangeably (even in the Sentencing Guidelines). They are, however, derived from very different ontological traditions and represent distinguishable perspectives. And while the two constructs are complementary, for the purposes of quantitatively assessing organizational compliance, culture surveys normally focus on the beliefs and values which guide the thinking and behavior of an organization's members. These types of surveys can measure outcomes, or the "impact" of their compli-

ance program activities, and can examine the extent to which individuals, coworkers, supervisors, and leaders demonstrate commitment to compliance; as such, they can be extremely useful tools for assessing the current state of the compliance climate or culture of an organization. They are usually presented in a Likert Scale format; that is, a series of gradation of answers wherein respondents are asked whether they "Strongly Disagree," "Disagree," are "Neutral," "Agree," or "Strongly Agree" with the statement presented in each item. A sixth option, "Don't Know," may be offered to respondents who feel they lack the knowledge needed to answer the particular question.

Knowledge Surveys

Another survey approach is the compliance knowledge surveys that are designed to measure the effectiveness of an existing compliance program. This type of survey tool differs from the compliance culture surveys that measure attitudes and changes in attitudes of employees regarding compliance in that the questions test knowledge of the compliance program structure and operations, including the understanding of the role of the compliance officer, how the hotline functions, et cetera.

This tool can be used to provide empirical evidence of the advancement of program knowledge, understanding, and effectiveness. Compliance knowledge survey approaches generally use only dichotomous questions that are simple questions with "Yes," "No," and "I don't know" answer choices. This approach creates the simplest of all the close-ended questions and as such is extremely easy for respondents to answer. All the questions on the survey are referred to as nominal. No binomial statistic is applied for the single "Yes," "No," and "I don't know" answers and serves as the dependent variable or one of the dependent variables in an analysis.

Generally, culture surveys are useful in measuring change in the compliance environment over a period of time. Therefore,

performing such a survey early on in the development of the compliance program and then later after it has been operating for a time will provide evidence of change in the culture as a result of the efforts of the compliance program.

Knowledge surveys are used most often with mature compliance programs to learn about the progress of the compliance program in reaching the employee population. Also, knowledge surveys that are dichotomous are less costly than the more complicated Likert Scale culture surveys. For either type of standardized survey, an organization can supplement them with specific questions and/or open-ended questions designed to provide more dimension to the information gathered.

Also, the survey can be linked to focus group meetings and interviews to shed additional light on the reason why there may be a problem as might be suggested in survey responses to certain questions. This can help if certain issues require deeper probing and more nuanced evaluation.

IN-HOUSE VERSUS VENDOR SURVEYS

The first thing about developing surveys is that anyone can draft a survey in a matter of hours; however, that does not mean that every survey is reliable, valid, and credible to an outside party. The key to developing a survey is to ensure it is reliable, valid, and credible, which is not easy to do. Internally developed and administered surveys may be questioned as to potential bias or reliability. For those desiring to develop a survey in-house, the following may be useful:

■ *Establish a Survey Committee* to be responsible for developing a strategy to manage all phases of the survey project. The process of designing, implementing, and reporting the data from an organizational survey is as important, if not more important, than the actual results.

■ *Subject Matter Experts (SMEs)* should be included on the committee, and they should have in depth knowledge regarding compliance programs.

■ *Collect Compliance Information Needed for a Survey* that includes data and information about the compliance program that could be used in measuring program effectiveness. This should focus on practical, real-life factors derived from experience and related to the design, management, and measuring effectiveness of compliance programs.

■ *Define Behaviors and Knowledge Necessary to Measure Compliance Program Effectiveness* that include factors and observed behavior critical to an effective compliance program. The survey designs included only the most important competencies to be measured by the survey.

The alternative to internally generated and administered surveys is using a vendor. In examining this approach, there are a number of factors to be considered, including those outlined above. In addition, think about the following:

■ What is the compliance experience of those who developed the survey?

■ How often has the survey instrument been used?

■ How many years has the survey been used and tested?

■ Are the results offered by the vendor certified?

■ How is the survey administered?

■ What is their cost for using and administering the survey?

■ How much time is involved in delivering the results of the survey?

■ How much detailed analysis is provided with the survey results (tabulated data without analysis is of limited value)?

■ Can the vendor evidence an established and proven methodology to ensure consistency and accuracy?

■ What kind of quality control and review do they have?

TYPE AND NUMBER OF SURVEY QUESTIONS

Any survey used should meet the following standards:

■ The questions should be short and simple.

■ Questions should be unambiguous, specific, avoiding generality.

- Unfamiliar terms and jargon should not be used.
- Avoid asking information that may not be known to respondents.
- Avoid hypothetical questions.
- Questions should be written in the present tense.
- Do not use compound ("double-barreled") questions.
- Do not use leading questions.
- Avoid questions that may create potential cultural bias.
- Use multiple measures of the same topic.

Surveys must be kept to a reasonable length, generally no more than 20 to 30 minutes to complete. If it takes longer, the employee may become apathetic and begin responding in a careless fashion. Also, management may not fully endorse the survey because the time spent to complete the survey may be seen as a loss of productivity. It is also worth noting that Likert Scale surveys taken longer to complete than "yes-no" dichotomous questions.

DESIGNING, TESTING, AND VALIDATING THE SURVEY INSTRUMENT

This topic has been dealt with in part earlier in this article; however, survey instruments need to be tested repeatedly to ensure that the tool developed will bring valid and reliable results. This should include having the survey pilot tested with sample groups who provide feedback, followed by revision and fine tuning.

DETERMINING THE METHOD OF DELIVERY OF THE SURVEY

The delivery method of the survey is an important decision. It can be administered (a) in paper mode and manually tallied; (b) via an automated process through the Internet; or (c) some other means. Be mindful of the cost in time and effort for each modality. Another important factor is protecting the identity of respondents and the manner by which this is accomplished. This is critical to avoid creating a bias to the results.

In today's environment, using a Web-based survey method is probably the easiest and most reliable means to conduct a survey. Another significant factor to consider is whether you survey the entire population or a stratified sample in which the results are representative of the population as a whole.

RELIABILITY OF RESULTS

To ensure reliability, validity, and credibility of survey results, all of the points raised above should be considered carefully. Any deviation from the best practice standards noted herein will only undermine the value of the results.

VALUE OF SURVEY RESULTS FOR THE COMPLIANCE PROGRAM

Surveys, whether culture or knowledge, can provide great insights into how effective the compliance program has been in changing and improving the compliance of an organization. They can signal not only strengths in the compliance program but areas of potential weakness warranting attention. They also can communicate a strong positive message to employees.

Ideally, surveys can (a) signal to employees that their opinions are valued; (b) underscore organization commitment to them as individuals; and (c) signal that their input is being used to make positive changes. These messages can have a powerful influence on increased compliance, reduced violations, and heightened integrity.

FREQUENCY OF CONDUCTING SURVEYS

Conducting surveys is time consuming in environments that have little time to spare. Therefore, they should be used sparingly and no more often than annually. Also, what the survey intends to measure is an important factor in deciding how often the workforce should be surveyed. For example, changing the culture of an organization does not take place overnight. Surveying for the compliance culture should be conducted less often than knowledge sur-

veys, which can have significantly different results in a matter of a few months.

Another factor in the frequency of surveys is whether you are surveying the entire universe of employees or a valid representation of the universe. In any case, it is not advisable to survey employees too often or it will lose the effect of buy-in and support.

Endnotes:

1. Federal Sentencing Guidelines for Organizations, §8B2.1.(a)(2). See also United States Sentencing Commission. Guidelines Manual. 1 Nov. 2010. www. ussc.gov/Guidelines/2010_guidelines/ToC_PDF.cfm.

2. Department of Health and Human Services Office of Inspector General. Publication of the OIG Compliance Program Guidance for Hospitals. 63 Fed. Reg. 35, 8987 (Feb. 23, 1998). oig.hhs.gov/authorities/ docs/cpghosp.pdf; and Department of Health and Human Services Office of Inspector General. OIG Supplemental Compliance Guidance for Hospitals. 70 Fed. Reg. 4858, 4865 (Jan. 31, 2005). oig.hhs.gov/ fraud/docs/complianceguidance/012705HospSuppl ementalGuidance.pdf.

3. *OIG Compliance Guidance for Nursing Facilities,* Federal Register / Vol. 65, No. 52 / Thursday, March 16, 2000. oig.hhs.gov/fraud/docs/complianceguidance/ nhg_fr.pdf).

4. For more detailed explanation regarding these types of surveys and methods, see www. complianceresource.com.