

## DOJ, OIG, and Sentencing Commission Stress Importance of Evidencing a “Culture of Compliance”

By Richard Kusserow | April 16, 2020

### How to find an inexpensive solution to measure and benchmark *compliance culture*

The U.S. Sentencing Commission Guidelines for Organizations note the importance of organizations to develop institutional compliance *cultures* that discourage criminal conduct. They note that an effective compliance and ethics program must “promote an organizational *culture* that encourages ethical conduct and a commitment to compliance” and encourage compliance assessments that identify the presence of a *culture* that discourages wrongful conduct.

The OIG Compliance Program Guidance for Hospitals stresses similar points by stating that compliance efforts need to be designed to establish a *culture* that promotes prevention, detection, and resolution of instances of conduct that violate applicable laws, regulations, health care program requirements, and ethical business practices. The OIG also calls for using *benchmarks* that demonstrate implementation and achievements as being essential to an effective compliance program. They further advise that consideration should be given to using *questionnaires* that solicit impressions of a broad cross-section of employees and staff. This is one of three methods the OIG notes for evidencing program effectiveness. In the OIG Compliance Program Guidance for Hospitals, it states that “fundamentally, compliance efforts are designed to establish a *culture* within a hospital that promotes prevention, detection and resolution of instances of conduct that do not conform to Federal and State law, and Federal, State and private payor health care program requirements, as well as the hospital’s ethical and business policies. . . the compliance officer or reviewers should consider techniques such as . . . *questionnaires* developed to solicit impressions of a broad cross-section of the hospital’s employees and staff” and should evaluate all elements of a compliance program through *employee surveys*. In the Compliance Program Guidance for Nursing Facilities, the OIG recommends evaluations of compliance programs through the use of *employee surveys*, internal assessments, periodic review of *benchmarks*, and feedback from employees.

The DOJ “Evaluation of Corporate Compliance Programs,” published last year, notes that an effective compliance program includes “[t]he company’s *culture* of compliance, including awareness among employees that any criminal conduct, including the conduct underlying the investigation, will not be tolerated.” The DOJ calls for their prosecutors to assess whether the company has established processes that incorporate the *culture* of compliance into its day-to-day operations. They also note that it is important for a company to create and foster a *culture* of

ethics and compliance with the law, and executive leadership needs to implement a *culture* of compliance from the top.

### **Measuring and Benchmarking Compliance Culture**

The biggest challenges in creating or using a benchmark survey are determining (a) how to evidence a *culture of compliance*; (b) what credible method to use to measure an organization's *culture of compliance*; and (c) how to *benchmark* progress in the organization's *culture*? In the 2020 SAI Global and Strategic Management national *Healthcare Compliance Benchmark Survey* of compliance programs, respondents indicated that one-third of organizations use surveys on compliance issues with their work force, with most organizations relying upon internally generated and administered surveys. Only 8% of respondents reported using professionally developed and administered surveys, which are far more reliable and have greater credibility with executive leadership, Boards of Directors, as well as outside authorities. The *OIG Compliance Program Guidance for Hospitals* also calls for "the existence of benchmarks that demonstrate [that] implementation and achievements are essential to any effective compliance program." Compliance culture surveys can be used to meet that standard.

### **Solution to Measuring and Benchmarking Compliance Culture**

Since 1993, Strategic Management has been employing a Healthcare Compliance Culture Benchmark Survey (Survey) on behalf of hundreds of health care organizations with a surveyed population of more than three quarters of a million. This has created a huge database of users that permits organizations to *benchmark* their results against that universe. Many use the Survey's initial results as a baseline from which future surveys can be used to *benchmark* change in the compliance environment over time. Results from a survey report should provide great value in identifying an organization's strengths as well as opportunities for improvement. This can help ensure that the organization is on track towards creating a *compliance culture* of the highest quality. It can provide great insights into how effective the compliance program has been in changing and improving the compliance of an organization and signal not only the strengths in the compliance program, but also the areas of potential weakness that may warrant attention.

Employing this tool is surprisingly inexpensive and costs only a small fraction of a full compliance program effectiveness evaluation or even a gap analysis. They are also less costly than developing and delivering a survey in-house. Reports from the Survey are about 30-50 pages and include tips for addressing any weaknesses. They benchmark results against the huge universe of those who have used the same Survey in three ways: (a) overall results; (b) by category; and (c) individual questions. The results provide invaluable metrics of program effectiveness.

**For more information on conducting a Compliance Culture Survey, please contact Kashish Parikh-Chopra, JD, MBA at (703)-535-1413 or at [KChopra@strategicm.com](mailto:KChopra@strategicm.com).**