



HCCA's 12TH ANNUAL COMPLIANCE INSTITUTE

APRIL 13-16, 2008 | NEW ORLEANS, LA | HILTON RIVERSIDE NEW ORLEANS

Outside-the-Box Compliance Initiatives

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Thinking Outside The Box

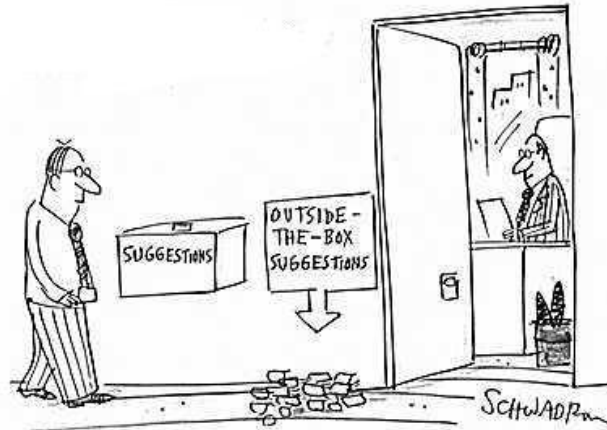
- Wikipedia: 'Thinking outside the box' is a cliché or catchphrase used to refer to looking at a problem from a new perspective without preconceptions
- My Goal: Share some creative ways to address compliance risks



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Thinking Outside The Box



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Standard Compliance Program

- Designation of a compliance officer and compliance committee
- Development of written policies and procedures
- Development of open lines of communication
- Appropriate training and education
- Internal monitoring and auditing
- Response to detected deficiencies
- Enforcement of disciplinary standards



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Smart Communications

- Compliance risk
 - Imprudent communications
 - Email statements out of context
 - Statement reflecting unlawful intent
- Legal basis
 - Federal Anti-kickback Statute
 - Prohibits payment of remuneration with the intent to induce the referral or purchase of an item or service reimbursed by a federal health care program
 - “One Purpose Test”
 - Government only must prove that one purpose of the payment was to induce referrals



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Smart Communications Compliance Initiative

- Traditional concept: focus on intent
 - Code of Conduct and related training focus on actual intent
- Outside the box concept: focus on communications themselves
 - Prevent communications that the government could use to argue about the organization’s intent



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Smart Communications Compliance Initiative

- Goal
 - Develop a program that reduces the likelihood the organization's employees will make imprudent communications
 - Focus on form to achieve substance
- Elements
 - Identify proper target audience
 - Implement an education / training component
 - Develop audit process
 - Provide proper incentives



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Smart Communications Compliance Initiative

- Identify proper target audience
 - Customize to your organization
 - Departments that communicate or negotiate with physicians
 - Departments that could receive improper inducements
 - Examples
 - Sales / marketing
 - Executive management
 - Physician relations
 - Purchasing
 - Employed physicians



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Smart Communications Compliance Initiative

- Implement an education / training component
 - Core message: smart communications are important
 - Discuss what constitutes an “imprudent” communication
 - Elaborate on risks related to employee & organization
 - Include discussion of how to respond to imprudent requests / communications
 - Example of 20 minute presentation:
 - 10 minutes of context, bad examples, and consequences
 - 10 minutes instruction on expectations and smart communication program
 - Incorporate into standard employee training



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Smart Communications Compliance Initiative

- Develop audit process
 - Identify departments with highest risk
 - Develop time frame for review
 - Use IT support to sample emails
 - Review for improper communications
 - Document review, even if no deficiencies found
- Inform employees that audit will occur
 - Notice of audit as important as audit itself
- Review performed by Compliance Department or individual outside relevant chain of command



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Smart Communications Compliance Initiative

- Provide proper incentives
 - Incorporate into annual performance review process
 - Financial incentives may not be necessary
 - Goal is to incorporate smart communications into sales / operational culture
 - Buy-in from relevant department is important



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Smart Communications Compliance Initiative

- Conclusion
 - One bad document can trigger significant enforcement action and liability
 - Significant compliance value in developing a smart communication program
 - Focus on ethical communications reinforces underlying compliance principle
 - E.g., “Our organization does not pay for referrals, so no employee should be writing emails that indicate otherwise”



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Accounts Payable Safeguards

- Compliance risk
 - Payment to referral source, without meeting technical requirements of Stark Law, even if inadvertent
- Legal basis
 - Stark Law
 - Exceptions require some element of technical compliance
 - E.g., written agreement, set in advance, one-year term
 - Strict liability standard
 - Federal Anti-kickback Statute
 - Safe Harbors require complete compliance with all elements



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Accounts Payable Safeguards

- Traditional concept: use policies and training to educate on Stark Law requirements
 - General policies regarding Stark Law
 - Specific policies related to issues that can create Stark Law issues
 - Medical direction policy, lease policy, gift policy
- Outside the box concept: use accounts payable systems to prevent non-compliant payments
 - Expand the accounts payable role to be gatekeeper for this compliance issue



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Accounts Payable Safeguards

- Goal
 - Avoid inappropriate, unauthorized or inadvertent payments to a physician, which could create a financial relationship under the Stark Law
- Elements
 - Develop plan for coordination
 - Develop approval tools and processes
 - Audit for effectiveness
- Example: before a check is issued to a physician, compliance approval must be given; compliance department commits to timely approval process that will not impede operations



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Accounts Payable Safeguards

- Develop plan for coordination
 - Open lines of communication
 - Understand and appreciate increased burden on A/P department
 - Develop process to be consistent with current A/P process
- Communicate plan to all potentially affected departments
- Develop process for necessary communications
 - Process for compliance approval should be streamlined



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Accounts Payable Safeguards

- Develop approval tools and process
 - Develop process for most common payments
 - Checklist review used to expedite review
 - Periodic payments approved at time implemented and annually thereafter
 - Have “front end” process for unusual request
 - Roll out process with communications to departments that submit check requests



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Accounts Payable Safeguards

- Audit for effectiveness
 - Sample and review of A/P before program development to understand issues and gather facts
 - Initial audit after implementation to assess effectiveness and needs for modification
 - Assess whether additional audits are beneficial
 - Audit compliance approval process for accuracy
 - Audit A/P process for “missed” payments
 - Assess operational impact and strategies to further streamline process



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Accounts Payable Safeguards

- Conclusion
 - Strict liability under the Stark Law warrants safeguards against technical noncompliance
 - Existing A/P controls may be expanded efficiently to add a compliance safeguard
 - Effective planning and communication are essential to success



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Review And Align Incentives

- Compliance risk
 - Bonus and compensation incentives can inadvertently (or intentionally) increase compliance risks
 - Legitimate business benefit should justify associated compliance risks
- Legal basis
 - False Claims Act
 - Federal Anti-kickback Statute
 - Stark Law
 - OIG Civil Monetary Penalty Authority



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Review And Align Incentives

- Traditional concept: compliance role in compensation incentives viewed narrowly
- Outside the box concept: review incentives to assess whether business purpose justifies any increased compliance risks
 - Compliance department can facilitate dialogue within institution to allow best possible alignment of incentives
 - Can facilitate assessment of effectiveness of current compensation systems



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Review And Align Incentives

- Goal
 - Confirm that financial incentive systems achieve business and compliance objectives
 - Decrease/eliminate unintended incentives that unnecessarily increase compliance risk
- Elements
 - Identify compensation and incentive systems for departments with higher compliance risk
 - Preliminary assessment of incentives and related compliance risks
 - Dialogue with affected departments
 - Document justifications and changes



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Review And Align Incentives

- Identify compensation and incentive systems for departments with higher compliance risk
 - Departments that bill or code claims
 - Departments that sell, market or purchase
- Example
 - Hospital A: coding department has minimum standard for number of charts coded per day
 - Hospital B: coding department target hospital case mix index



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Review And Align Incentives

- Preliminary assessment of incentives and related compliance risks
 - Incentives not limited to “bonus” programs
 - Identify counter-incentives (checks and balances)
- Example
 - Hospital A (charts per day): Incentive to value speed over accuracy? Is expected volume reasonable?
 - Hospital B (case mix index): Incentive to value DRG weight over accuracy?
 - Both: Is there a coding accuracy audit as a counter-incentive?



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Review And Align Incentives

- Dialogue with affected departments
 - Incentives are important to achieve legitimate business objectives
 - Current management may not have considered compliance implications
 - Current incentives may remedy issues that no longer exist
- Example
 - Hospital A (charts per day): Is the issue productivity or timely billing? Can accuracy and timeliness be better balanced?
 - Hospital B (case mix index): Is under-coding an issue? What safeguards against upcoding?



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Review And Align Incentives

- Document justifications and changes
 - There is value in contemporaneous documentation of legitimate purposes of incentive system and compliance safeguards
 - Updating incentive system does not mean that prior system was wrong or improper
- Example
 - Hospital A (charts per day): Reasonable productivity measure. Quarterly accuracy audit reinforces accuracy.
 - Hospital B (case mix): Focus on case mix index changed to timeliness of coding, but case mix focus for some diagnoses is proper given patient population



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Review And Align Incentives

- Conclusion
 - Expectations and incentives drive behavior
 - Government investigations focus on employee incentives
 - Department managers may resist review of incentives
 - “Win Win” possible to align business and compliance incentives
 - Focus on balance not bright lines



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Thinking Outside The Box

- Conclusion
 - Creative ideas can work
 - Borrow and customize



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Thinking Outside The Box



"Your proposal is innovative. Unfortunately, we won't be able to use it because we've never tried something like that before."



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