

## An Integral Compliance Model: Lessons Learned from Healthcare

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*A taxpaying public that doesn't understand the law is a taxpaying public that can't comply with the law.*  
Lawrence Gibbs, Commissioner, Internal Revenue Service, 1987

### The New World of Compliance

It is hard to obey the law, even for the best-intentioned business leaders. Surprisingly, the experience of some managed health care organizations may help ease the growing burden of corporate compliance.

Since the WorldCom and Enron corporate scandals, businesses have had to reexamine their own willingness and ability to obey the law. Some of this self-examination has resulted from direct legal mandates imposed by these scandals' offspring, such as those required by the Sarbanes-Oxley Act of 2002. Another incentive for the increase in self-auditing has been the fear of lawsuits brought by shareholders, consumers, or other stakeholders.

What is so tough about obeying the law? Each of us has had some training in this basic act of social responsibility. This training dates back to our earliest memories of parental warnings to "obey the rules." Most of those rules seem simple and make sense.

Therefore, we typically attribute corporate misconduct as being more likely the product of moral defect than more innocent explanations such as ignorance of the law or the sheer difficulty of compliance. In addition, we sometimes take President Harry S Truman's notion of the buck stopping at the top to mean that, when companies violate the law in spectacular ways, senior management's bad motives must be at the heart of the crime.

Occasionally, prosecutors find evidence of bad motives at the wrongdoing company. However, in many cases, that

corporate malfeasance is not simply a matter of bad intent by senior executives. Complying with the law can be extremely difficult, even for companies led by skilled leaders with the best of intentions.

The difficulty in compliance is particularly tough in the current environment of increased regulation and enforcement. Countless new laws and regulations enacted by fifty state legislatures, the Congress, and hosts of state and federal regulatory bodies, coupled with changing standards of care imposed by federal and state courts, now burden American businesses with a dizzying array of sometimes conflicting standards of behavior that bedazzle even the most diligent.

One of the most heavily regulated industries is healthcare. The new HIPAA privacy regulation, the new Labor Department rules on claims payment, and dozens of managed care laws and regulation are only the tip of the iceberg for this sector. A look at health care, then, may shed some light on the problem of corporate compliance in America.

A brief glance at the world of one of the most often criticized types of organizations, a managed care organization (MCO), will highlight the issue. A typical national company that offers health benefits delivered through health maintenance organizations (HMOs) and preferred provider organizations (PPOs) must comply with an unfathomable host of laws and regulations. At the very least, in addition to the massive array of laws that apply to all large American corporations, such a company must comply with:

- federal laws and regulations dealing with health care and employee benefits, such as ERISA, Medicare, Medicaid, and the Mothers and Infants Act;
- state laws and regulations – in each state in which the company operates – dealing with health care issues such as mandated benefits, the credentialing of physicians and hospitals, healthcare consumer protection, provider network management, utilization management, quality management, and patient safety.

One can get an idea from how heavy this regulatory burden on MCOs is, by noting that most observers say that the implementation of just the IT component of the new federal health care privacy regulation (HIPAA) is much more difficult and costly than the dreaded Y2K fixes.

In addition, most such MCOs face pressure – applied by regulators and customers – to achieve accreditation by one or more of the major managed care accrediting bodies, like URAC, NCQA, JCAHO, or AAAHC. Furthermore, law enforcement officials are increasingly using tools like the antitrust acts and RICO to proscribe a variety of behaviors by MCOs. Finally, beginning in the late 1990s, aggressive plaintiff's attorneys began to target managed care companies.

## Dangerous Myths about Compliance

Not surprisingly, executives in general, and managed care executives in particular, are increasingly interested in assuring that their companies comply with the law. This is not a sudden attack of conscience. Rather, more of these executives see the connection between corporate behavior and the bottom line. We can see this connection in the fact that the Baldrige Quality Index outperformed the S&P 500 4.4 to one in 2002, the seventh straight year it has beat the S&P 500. Facts like this call into question a few widely held myths about regulatory oversight.

### Myth #1: Compliance with Regulations is Unrelated to Profitability.

Some executives, focused as they should be on their companies' bottom lines, have suggested that compliance

programs are a distraction from the more important business facing the companies: profits. Yet, recent research published by the National Committee for Quality Assurance (NCQA) indicates that, on average, companies that comply with NCQA's accreditation standards are significantly more profitable than those that are not accredited are. Although such a correlation is not proof that compliance programs cause profitability, it is suggestive of the notion that compliance is quite compatible with the achievement of corporate financial goals. The aforementioned Baldrige Quality index points to a similar conclusion.

### Myth # 2: Regulatory fines are more related to the regulators' need for money than they are to corporate behavior.

Some executives have expressed this rather cynical view that regulatory fines are merely another form of tax, unrelated to the culpability of the company. While this might be true in some industries, it seems not to be the case in the world of MCO regulation. In back-to-back studies of market conduct fines levied by the Maryland Insurance Administration and the Virginia Bureau of Insurance from the late-1980s through the mid-1990s, my colleagues and I found a remarkably close relationship between the number and seriousness of violations of law and the fine imposed by regulators. In both states, we were able to explain over 90 percent of the variance in the fines with such reasonable predictors as "seriousness of offense" and "number of offenses," a remarkably high level of predictability in any domain involving human judgment. In short, regulators consistently fine chronic and serious law-breakers more heavily than other health insurers.

### Myth # 3: MCO regulatory fines are small enough to write off as the "cost of doing business."

This myth may have been true in most states at one time, and in some states no doubt still carries some measure of validity. Increasingly, however, the fines and verdicts are getting too large to dismiss so easily. Regulators are enforcing existing regulations with increased vigor. Integral Healthcare Solutions recently conducted a review of a dozen of the more active state insurance departments that revealed a radical increase in the size of the average MCO fine in the last five years. That survey revealed that the number of seven-figure fines has soared to record highs in the last two years, particularly in connection with findings

of delays in the payment of claims submitted to MCOs by providers. For example, the average fine levied by the New York Insurance Department against insurers for late claims payment in 2000 was just over \$26,000; in 2002, that figure had soared to \$183,000. Regulators across the nation have repeated this pattern.

#### **Myth #4: Undue attention to compliance places stress on employees.**

Some corporate executives have avoided their compliance obligations under the rationalization that compliance efforts add to the daily stresses of employees, lowering job satisfaction. Not only is this not the case, but it also appears to be contrary to research findings. One recent study revealed that job satisfaction is actually higher in companies where employees perceive that the employer is supportive of compliance efforts.

Thus, contrary to popular myth:

- Compliance is consistent with profitability;
- There is a predictable relationship between actual corporate misconduct and the size of regulatory fines;
- Many regulators are increasing fines substantially, so that they no longer can be considered a mere “cost of doing business”;
- Compliance tends to elevate employees’ job satisfaction.

## **Two views of compliance: Classic Model vs. Integral**

There are two ways to tackle the problem of compliance. There is a classic model, which is inefficient, expensive, and tough to administer. There also is an integral model, which, we argue, is a vast improvement. Under the classic model, the purpose of a compliance program is to monitor industry-specific laws and regulations and to educate the organization’s managers on what those laws and regulations require. The compliance officer operates much like a lawyer, advising his or her “client” as to the current laws and how to comply with those laws.

Over the years, this model has proven to be lacking in several respects.

**First**, organizations operating under the classic model tend to go through “surges” of compliance activity, increasing compliance efforts just before or just after compliance “events” such as market conduct examinations or accreditation reviews. Then, when the threat of oversight wanes, such organizations turn their attention away from compliance toward other activities. This is especially misguided with the rise of interim market conduct examinations and with the tendency of accrediting bodies to require ongoing compliance with accreditation standards.

**Second**, organizations operating under the classic approach view compliance as an activity separate from the activity of day-to-day operations. Thus, compliance activities tend to be merely educational, investigational, or punitive. Not surprisingly, employees operating under such a system can tend to view their colleagues who oversee corporate compliance as separate and adversarial.

**Third**, employees of classic companies, viewing their compliance officers as adversaries, develop ornate structure and systems to avoid detection of non-compliant activity.

**Fourth**, because the activities of the classic compliance program do not interact directly with the development of policies and procedures, there is no necessary connection between the formal description of proper performance by employees and applicable legal standards.

**Fifth**, because classic compliance programs generally do not attend to such “interior” states as employee motivation or corporate culture, they make no direct effort to exercise any influence over factors that are important to the question of whether the company meets the applicable legal or accreditation standards. In the face of a growing body of evidence that corporate culture has a profound impact on a company’s tendency to comply with legal and regulatory requirements, there is little scant acknowledgement of that research in the compliance activities of American companies.

**Sixth**, many classic compliance programs operate separately from other important aspects of compliance such as accreditation or general corporate law, creating inefficiencies or, even worse, programs that operate at odds with compliance with other laws and standards outside the scope of the compliance program.

In response to these limitations of the classic model, some organizations, particularly in the complex regulatory world of managed healthcare, are moving toward an “integral model” of compliance. There are several characteristics of such a compliance program. The unifying theme of all of these characteristics can be summarized as, “no boundaries”:

#### 1. Inclusive of all applicable laws, regulations, accreditation standards, and major client requirements.

A truly integral compliance program does not draw boundaries within the landscape of applicable rules and standards. Rather, it seeks to include and integrate all laws and regulations, whether they are state or federal, all relevant accreditation standards, and even the contractual obligations of major clients, particularly governmental clients like the Centers for Medicare and Medicaid Services (CMS).

This can be particularly complicated for companies operating in multiple states, as is the case with one of our clients, an MCO with PPO operations in all 50 states and the District of Columbia and HMO operations in over a dozen states. The process for such a company to track all the relevant laws and regulations, not to mention accreditation programs, is one that requires substantial investment in competent staff and powerful software.

#### 2. Integrated with day-to-day business tools like policies and procedures and forms.

An integral compliance program does not draw boundaries that divide compliance from the policies and procedures of the company. In a well-run company, employees derive substantial guidance from their “P&Ps”. Yet, as noted above, classical compliance programs typically stop short of direct involvement in a company’s P&Ps. An integral compliance program includes a process that incorporates the requirements of all relevant legal and extra-legal standards into the body of the P&Ps. By doing so, the program makes it easy for the employee. Rather than having to keep track

of two sets of directives – legal standards and operational P&Ps – the employee functioning within the domain of an integral compliance program simply keeps his or her eye on the P&Ps, which embody any requirements of regulation or standard.

#### 3. Process-oriented. An integral compliance program is not fixed in time, but instead is designed to continuously update company P&Ps to reflect the dynamic regulatory and accreditation environment.

This can be an enormously complex process, but the consequences of failing to keep up with it can be far more costly than the cost of such ongoing compliance. An integral compliance program’s holistic view helps to streamline a corporate compliance program, allowing for an improved process that reduces risk and drives down the cost of compliance.

#### 4. Inter-departmental.

Integral compliance programs acknowledge the fact that every employee, every department, of a company must be involved in assuring that the company complies with applicable laws and standards. In the modern managed health care environment, at least, it is a rare employee who has no duties that are subject to the HIPAA privacy regulation, state insurance or managed care regulations, or accreditation standards. Thus, the compliance manager, and his or her supporting organizational and software systems, must be able to cross-functional boundaries throughout the organization.

#### 5. Consciously addresses corporate culture.

Integral compliance programs recognize that much influences corporate compliance than such externally manifest phenomena as employee behaviors and corporate systems. The fact that compliance is much easier for some companies than for others – a fact recognized by all veteran accreditation reviewers and regulators – suggest that some companies have cultures that support law-obedient behaviors more than do the cultures of other, less-compliant companies. Recent research confirms that such “cultures for compliance” do separate some companies from those that seem to be consistently entangled in regulatory or accreditation problems.

Similarly, integral compliance programs also look at individual employee “interiors”, such as whether an employee that has attended compliance training has actually learned what he or she needs to know.

## 6. Integral compliance programs draw no boundaries between people and software.

It is a rare company that is so small and so simple as to be able to rely entirely on human resources to manage its compliance obligations. This is particularly true if an organization is going to operate an integral, rather than classic, compliance program. Yet, many homegrown or commercial “compliance” software systems are rife with the very boundaries that typify a classical model, rendering them practically useless to support an integral compliance program. A number of national MCOs have developed highly sophisticated software solutions that incorporate many of the boundary-free elements described earlier. Additionally, at least one commercially available software, HealthFlash, has been adopted by several major MCOs to implement integral compliance programs. The technology underlying such homegrown and commercial software packages are not limited to the realm of healthcare. Rather, they have arisen there largely because of the requirements of a maximally complex regulatory and accreditation environment. Necessity has proven to be the mother of invention.

## Conclusion

The crazy-quilt world of managed health care has forced its inhabitants into a realization that is just now starting to dawn on the occupants of other industrial sectors: the new world of compliance will not be successfully navigated while driving your father’s compliance program. Rather, what is required in today’s complex regulatory world is the comprehensive, integrated approach reflected in integral compliance programs. Such compliance programs require a sophisticated integration of human and computer systems that cross, or, better yet, abolish, many of the boundaries that have plagued less successful compliance efforts.