

Compliance Today – May 2021 Meet Steve Schoenly: Incentivizing compliance

Steve Schoenly, Chief Compliance and Privacy Officer at Refresh Mental Health, Jacksonville, FL

This interview with Steve Schoenly (sschoenly@refreshmentalhealth.com) was conducted early in the first quarter of 2021 by Adam Turteltaub (adam.turteltaub@corporatecompliance.org), Chief Engagement & Strategy Officer, SCCE & HCCA.

AT: I'm really looking forward to having a discussion with you about incentives in compliance programs, but before we get there, I think it's worth talking about your experience. You have a bachelor's degree in mathematics and a master's in accountancy. That's obviously a great background for the auditing and monitoring part of a compliance program. Any surprising ways it's helped you with the rest of the elements?

SS: Thanks, Adam, I appreciate the opportunity to share my thoughts! I did take a roundabout way to end up in compliance, since I started out doing the traditional accountant's journey. I completed a numbers-related degree before going into accountancy and then heading into the Big Four^[1] for a career in public accounting and then in internal audit. The most surprising way my accounting and mathematics education has helped me has been in documentation. In accounting, for example, you learn the pain of reconciling accounts that are off, which means that meticulous record keeping as you go along really pays off. But even before that, when I was studying mathematics, missing one element of an equation could completely muddy the solution. I think that focus on completeness, and thinking in terms of solutions, has a surprising applicability to compliance. Chaos theory taught me that even within complex systems you can find patterns and organization, and anyone who has worked in compliance knows that chaos is often present. Pulling order out of that chaos is a key skill for a compliance officer.

AT: You came to compliance after a long and wide career in accounting. You worked both in the US and in Russia. Your career has also spanned several industries in addition to healthcare. There has to be a lot of lessons from that breadth and depth. What are some of the lessons from outside of healthcare that you think proved the most helpful for you in managing healthcare compliance programs?

SS: In the mid-90s I had a tremendous opportunity to live and work in Moscow for a few years. The mid-90s were a chaotic time in the former Soviet Union, but I loved the people and culture. Most professionals I worked with were in the midst of transitioning from the command economy they had always known to one in which the market ruled. Part of my job while there was to make sure I bridged the gap between what my clients had always known and introducing them to new concepts and new ways of doing things. I think I used that experience to understand much better how to introduce new processes and new ways of thinking to colleagues during my career.

After leaving Russia, I spent time in New York working in financial services Sarbanes-Oxley Act compliance, and the lesson that I have carried with me from that time is that compliance has a danger of being for show. Financial services firms spend vast amounts and employ substantial numbers of people working on compliance, only to have spectacular compliance failures, one after another. My time spent working there really made me focus on making sure that compliance was neither perceived as nor designed to be for show. Compliance programs should be aimed toward making real changes in the culture and in individual employees' behavior.

AT: Let's focus now on incentives—and I'm eager to dig deep here. At the HCCA enforcement conference, you spoke about using compensation to incentivize compliance. What led you to talk about this subject?

SS: My former colleague Alyssa Lawrence at the University of Miami Health System and I decided to speak about using compensation to incentivize compliance based on some departmental initiatives. The department was working on a structure to tie performance reviews and compensation to compliance goals, as well as refining a system that incentivized physician compensation based on their coding accuracy. We felt making compliance a compensation-related activity was important to talk about in more detail.

AT: It's interesting to me that people are more comfortable with the punishment side of things when it comes to compliance than they are with the incentives. Why do you think that is? I realize it's easier to figure out what you would punish people for than what you would reward them for. Plus, so many feel that compliance is expected and we shouldn't reward people for it. I disagree. Salespeople are supposed to sell, and we reward them for that. Why not compliance, too?

SS: We may have to place a little bit of the blame with our profession. As someone who has worked in internal audit and compliance, I have heard all the jokes, sometimes friendly, sometimes not: "Hey, look, here comes compliance, we're all in trouble now!" There is a perception that this is what drives compliance professionals—our desire to discover wrongdoing and punish it. We have to change that.

It is easy to see a one-to-one correspondence between a salesperson landing a \$1 million contract and getting a \$100,000 dollar bonus. It is a bit harder to see the connection between a department encouraging ethical, compliant behavior and avoiding some sort of government penalty. It would be the same as penalizing salespeople for failing to land that \$1 million contract—it does not flow as naturally. But we have to identify the measures and metrics that demonstrate positive outcomes from positive events that can be positively rewarded in order to make that connection work for compliance.

AT: So, assuming a company sets compliance incentives, what specific behaviors in managers should be rewarded?

SS: Managers are responsible for directing and coordinating their staff's work efforts to most efficiently and effectively achieve the goals of the organization, however those goals are defined. That means that if the board, executives, senior management, and so on define compliance as a goal, managers should ensure they help their staff's work effort to be focused on achieving the most efficient and effective ways to be compliant with regulations and policies. The managers' ability to demonstrate the increase in efficiency and effectiveness of their employees is what should be incentivized.

So that is a general behavior, but specifically this can be activities like completing annual compliance training, showing improvement in coding and billing accuracy, taking on compliance responsibilities like serving as a mentor to new hires, continually demonstrating through actions and words that nonretaliation is a core value, keeping records and data accurate and complete, and any other activity that helps promote the organization's goal to continually improve efforts to be compliant.

AT: What about frontline employees?

SS: Frontline employees have a fairly straightforward goal when it comes to compliance. An employee can show that they are taking advantage of as many opportunities to improve their understanding of compliance goals as possible. Employees are not usually in a position to decide if they are required to take compliance training, for example, but they can complete it when offered, and take advantage of educational opportunities to increase and demonstrate their understanding. I am always gratified when I get questions about the compliance blog post or

when someone attends a compliance lunch-and-learn—I think it demonstrates that the employee is really seeking to understand how to help advance the organization’s efforts to meet its compliance goals. Education is the key activity that leads to better employee behaviors, so that is what needs to be incentivized for frontline employees.

AT: What should not be rewarded that seems like it should be?

SS: One specific area that I have debated in the past has been looking at some sort of measurement of the number of compliance incidents at a business unit: “Bob’s area hasn’t had an investigation or hotline call or coding issue in two years; let’s reward that!” That might sound terrific and worthy of praise and reward. That might indicate Bob has been running an outstanding department, where everyone has internalized compliance expectations and works to support each other in meeting them. The problem is that the opposite might also be true: staff might be hesitant to report problems they see or to highlight compliance issues for fear of being accused of “snitching.” In Bob’s case, it might be better trying to understand why the department has not had a coding issue in two years: Has Bob offered continuing education? Does Bob encourage staff to call compliance with tricky questions? Has Bob designated mentors or friends to bounce ideas off of? Does Bob open staff meetings with highlighting staff excellence in these areas? Let’s incentivize based off of those activities.

AT: You point out that there are positive and negative ways to incentivize compliance. What are they and the challenges of each?

SS: The most obvious way is to incentivize nonbase compensation like bonuses, either by giving them or taking them away. Another way might be to affect other aspects of employment that indirectly affect compensation, like performance evaluations, promotions, or responsibilities. An organization might not allow employees to be rated as top performers in their performance evaluations if they missed key compliance targets, for example. And promotions might be contingent on demonstrating excellence in multiple areas, including hitting key goals for compliance. The incentive that most clearly motivates employees (other than continued employment) is their compensation.

AT: Can you take us through an example of an incentive program, say in billing compliance?

SS: I will simplify a bit, but let’s say a billing compliance measures claim coding on a points scale (more points taken away the more egregious an error is, rather than a pure financial impact measurement). Compliance might look at a physician (in this example) by sampling ten claims worth ten points apiece and discover that errors cost them 23 points. At this point, you could have a pass/fail assessment that says this physician failed the quality threshold of 80 points and, as a penalty, have a bonus reduced. I would say that this is a phase one approach to a billing compliance incentive program, but an impactful next step is to design the billing compliance program to look at trends, not snapshots in time. Is that 77 score an improvement from their previous review’s 72? Did they take advantage of resources and education to achieve that improvement? Do we punish failure, or do we start thinking about rewarding success? How about highlighting and incentivizing someone who achieves 100% results year over year? Rewarding improvement helps the organization tremendously.

AT: Let us look at the amount of reward. One approach I am familiar with makes compliance a threshold issue. There are not dollars attached to x, y, or z actions, but for the managers to earn their other bonuses, they have to have done x, y, or z. Do you think that approach has merit, or should there be dollars attached to specific compliance goals?

SS: Ideally, compliance goals are separate to emphasize that compliance goals are not threshold activities—“get to this minimum point for standard reward X.” Compliance really needs to be driven around a culture of continuous improvement that makes people want to do more than the minimum to be compliant. Tying

compensation to a specific compliance goal encourages everyone to be educating, improving, and promoting compliance constantly, regardless of other metrics like profitability and productivity.

AT: I want to move outside of compliance incentives to focus on incentive programs as a whole, if we could. I've argued long and often that compliance teams should have greater access to the incentive plan. Not so much to see it or set it but to see what's in it. To me, an incentive plan is often a road map to compliance risks. If you tell people that they will be rewarded for achieving X goal, a percentage of them will cheat to get there, and compliance teams need to think about what controls need to be in place to protect against that cheating. Am I overly enthusiastic?

SS: No, you aren't! Incentives are an area where traditionally compliance is asked to defer to internal audit or finance, and we should not. As you said, an incentive plan is a road map to compliance risks, and with that in mind, compliance should be involved in the design of the plans as well as the validation of the calculation of the incentives periodically. Having compliance personnel with a background in finance or accounting comes in quite useful here. Those skills help the compliance department to understand how employees, particularly physicians, are being compensated, and to have some ability to raise concerns before incentives are awarded and problems have been created.

AT: So, what should compliance teams be paying close attention to?

SS: For incentives, tone at the top is critical. What behaviors are rewarded or punished by the organization? Are the benefits for the individual clearly and measurably aligned with the organization's goals? "What outcome occurs if this behavior is incentivized, and how could someone cheat to achieve that outcome" is a question that should be applied to every incentive, positive or negative.

AT: How do we do this in such a way that the business sees this as value added rather than one more compliance step?

SS: I think about this a lot, not just in this area but across compliance. Everything can be reduced to a system with measurable outcomes even if it may not naturally seem like it can be described that way. Almost any process that compliance is interested in can be tied to results the company is interested in—better results, more efficiency, better patient outcomes, fewer government investigations. What has to be avoided is lobbying statements like "You just have to do this" at management, because if you continually tell someone that getting past the finish line is the only goal, they will cut as many corners and do that as quickly as they can to do that. We want compliance to be engaged in the business of continual improvement. Anecdotal results are harder and harder to sell these days—you have to do it with data and with analytics that can be verified and supported.

AT: Finally, looking to the future, we would all like to see compliance incentives, I think. Certainly, the Sentencing Guidelines argue for it.^[2] How else do you see compliance evolving over the next five years?

SS: A lot can happen in five years; I feel like I would have an amusing (and sometimes scary) time talking to myself in early 2016 about what would happen over the next five years, both personally, professionally, and for the nation and world as a whole! I am really interested, as many of us are, to see the compliance profession become more data driven and analytical.

I also think the Sentencing Guidelines will increasingly be seen as a bare minimum for a compliance program, and other frameworks such as the Committee of Sponsoring Organizations of the Treadway Commission (COSO) and International Organization for Standardization (ISO) will be used increasingly to integrate understanding of risk and quality into the compliance function. I have mentioned it several times, but I think compliance has the possibility to become the center of excellence in every organization. If there is a process that is important, it can

be defined as a policy or algorithm, and therefore compliance can be involved in measuring whether it is successful in supporting the organization's compliance goals—I think that is an amazingly powerful way to look at our profession.

AT: Thank you, Steve!

¹ “Big Four accounting firms,” Wikipedia, last edited December 29, 2020, at 15:10 (UTC), <http://bit.ly/2MEmPeX>.
² U.S. Dep’t of Justice, Criminal Div., *Evaluation of Corporate Compliance Programs* (Updated June 2020), <http://bit.ly/2Z2Dp8R>.

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