

Report on Medicare Compliance Volume 32, Number 10. March 13, 2023 In Updated DOJ Compliance Guidance, Compensation Is a Lever; One-Word Change ‘Slapped Me in the Face’

By Nina Youngstrom

The change of one word in the Department of Justice’s (DOJ) new version of the *Evaluation of Corporate Compliance Programs* is a potential bombshell in the eyes of Kim Danehower, corporate compliance officer at Baptist Memorial Health Care Corp. in Nashville, Tennessee.^[1] Although there are also significant additions about “compensation structures” and messaging platforms in the document, which was revised in early March, she took note of DOJ’s language switcheroo in the section on whether a compliance program is well-designed.

The 2020 version stated that “The critical factors in evaluating any program are whether the program is adequately designed for maximum effectiveness in preventing and detecting wrongdoing by employees and whether corporate management is enforcing the program or is tacitly encouraging or pressuring employees to engage in misconduct.”

The updated version replaces “pressuring” with “permitting” and in the process holds managers and supervisors accountable for misconduct that happens on their watch. “That one slapped me in the face,” Danehower said. She thinks this single word will reshape training and prompt adjustment in policies at the health system, including its disciplinary policies. “Compliance officers need to stop and take note.”

DOJ’s *Evaluation of Corporate Compliance Programs* is guidance for white-collar fraud prosecutors who assess the effectiveness of compliance programs when deciding whether to file charges against a corporation and what the charges should be. The document, first published in 2017 and updated initially in 2020, also is used by compliance officers to benchmark their organization’s compliance program. It modifies the Principles of Federal Prosecution of Business Organizations in the *Justice Manual*.

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