A simple revolution: Rethinking an effective code of conduct

By Darrell Contreras, Esq., CHC-F, CHPC, CHRC

Darrell Contreras (darrell.contreras@millenniumhealth.com) is Chief Compliance Officer at Millennium Health in San Diego, CA.

The code of conduct or standards of conduct (SOC) document outlines the core behavioral expectations of the organization. Ideally, all employees would regularly read and refer to the SOC, understand what they read, and know where it can be found. However, it is possible that in an effort to provide expansive guidance, an SOC becomes so lengthy and difficult to read, it is rarely accessed by employees except during annual trainings or attestations. Moreover, after completing training, employees may quickly forget the information contained in the SOC or even where to locate the document if asked to do so. Simply stated, for many organizations and employees, there is a risk that the SOC does not get the desired attention and use.

Most importantly, the lack of awareness of the SOC can result in employees' decision-making being based on their own idea of correct standards instead of the organization's SOC. The challenge, therefore, is improving the SOC to create a more purpose-driven document that is a valuable source of guidance. What strategies can be used to simplify an SOC to cover the required information and convey it in a manner that is easily accessible to all employees? Could an SOC be distilled into a single-page document that would integrate into an employee's daily workflow? At Millennium Health, we simplified and streamlined our 24-page Business Code of Conduct into a single-page document that provides guidance for our key compliance areas and addresses all of the compliance program effectiveness measures. In addition, through departmental involvement in the development of the SOC, we created organization-wide ownership of our SOC.

Obtaining leadership buy-in

Effective SOCs communicate the organization's expectations in a simple format that can be referenced and used to guide decision-making. Creating one begins with buy-in from the organization's leadership, compliance committee, and board of directors. For some organizations, it may be difficult to consider a single-page document, because they are used to having the lengthy, detailed one. To help address that concern and prompt consideration of a single-page SOC, consider asking the board and the compliance committee the following questions:

1. Do you know the official title of the current SOC?

2. Do you know how many pages are in the current SOC?

3. Do you know what topics are included in the current SOC?

4. Does the current SOC address the Anti-Kickback Statute?

5. Was the answer to question four based on your specific knowledge of the current SOC, or was it based on the expectation that the Anti-Kickback Statute should be addressed in the SOC?

6. Could you recite a standard from the current SOC?

7. Could you identify a standard that is *not* in the current SOC?

These questions are not intended to embarrass anyone, but rather are meant to generate discussion about whether the existing SOC is providing daily decision-making guidance. Moreover, by identifying the challenges these seven questions pose with the board and the compliance committee, a compliance officer can question whether it is realistic to expect employees to be familiar with and reliant upon the current SOC. This exercise can help establish buy-in for the concept of a simplified, single-page document.

SOC requirements

To prepare for a single-page SOC, we must start by reviewing the relevant guidance regarding the SOC. Several key criteria are included in the Office of Inspector General (OIG) compliance program guidance documents and can be divided into three categories: commitment, communication, and expectations.

Commitment requires:

- A "clearly delineated commitment to compliance"[1] by the members of the organization;

- Organization's "commitment to comply with all Federal and State standards, with an emphasis on preventing fraud and abuse";

- "Organization's mission, goals, and ethical requirements of compliance";

- Clear expectation and requirement of all organization members to comply with the SOC; and

- Participation and involvement from senior leadership in the development of the SOC.

Communication means an understandable SOC document that is:

- Written in simple language that is appropriate for all levels and is translated into all relevant languages;

- "Posted and distributed"[2] to all organization members;

- "Regularly updated"; and

- "Details the fundamental principles, values, and framework for action."

Expectations:

- Certification that employees "have received, read, and will abide by the organization's [SOC]";[3]

- Obligation to report all suspected noncompliance with the SOC;

- The freedom to ask questions and seek guidance related to the SOC; and

- A commitment to a nonretaliation policy.

For organizations under a corporate integrity agreement, there may be additional criteria that must be included in the SOC. The Millennium Health Corporate Integrity Agreement requires us to:

- Distribute "a written [SOC] to all Covered Persons";

- Demonstrate the "commitment to full compliance with all Federal health care program requirements," including preparation and submission of accurate claims;

- Require all Covered Persons "to comply with all Federal health care program requirements, as well as Millennium's own Policies and Procedures;"

- "Convey the expectation that all 'Covered Persons' report to the Compliance Officer, or other designated

individual, "suspected violations of any Federal health care program requirements or Millennium's own Policies and Procedures;" and

- "Inform all 'Covered Persons' of their right "'to use the Disclosure Program...and the Millennium's commitment to nonretaliation and to maintain, as appropriate, confidentiality and anonymity [for] such disclosures.'"

In addition to the compliance program guidance, the HCCA-OIG Effectiveness Resource Guide[4] includes additional criteria to be used when assessing the effectiveness of the SOC. Among the 401 measurement criteria listed in the Effectiveness Resource Guide, Section 1.41 et seq include the following criteria:

- The SOC is written, reviewed, and approved by the board (directed by Section 1.3 to be written at no higher than a 10th-grade reading level);

- Attestations are received from all affected persons—employees, employed physicians, allied health professionals, independent (contracted) physicians, volunteers, and vendor/contractor/consultants in the organization—t hat they have received, read, and will abide by the SOC;

- The SOC is consistent with the mission and vision statements of the organization and are accessible via website/intranet to all affected persons;

- Test/survey of affected employees on awareness of the SOC, the content of the SOC, and how to locate the SOC;

- Evidence of distribution of the SOC to all affected persons;

- New affected persons are oriented on the SOC within 30 days of joining the organization; and

- Understanding of the SOC is assessed and measured through post-training test scores.

Building a single-page SOC

Although there are several criteria that must be included in the SOC, there is no requirement addressing the length of the SOC. Instead, all the criteria above lead to a simple conclusion: The SOC must guide decision-making by the organization, its leadership, and employees to support compliance with laws, rules, and regulations.

At Millennium Health, to meet the goal of developing a document that guides decision-making, we looked at how people make decisions and concluded that our new SOC must: (1) provide meaningful guidance on legal, regulatory, and company expectations; (2) be visible and easily accessible to all employees; and (3) be memorable, or "sticky," so employees will remember and reflect upon the SOC when making decisions.

Meaningful guidance

When reviewing our prior Business Code of Conduct, we observed that everything included in that document was an edited excerpt from an existing policy. Although the detailed policy excerpts provided more information than a single statement, each edited excerpt was effectively a summary of the full policy. The danger in providing a summary of the full policy is that it will, by definition, exclude information that was deemed important enough to be included in the full policy. Put another way, by including summaries of policies in the SOC, we ran the risk of employees believing that the summary contained all the important information from the policy, rendering reading the full policy unnecessary. In contrast, including a summary statement that captures the main point of the policy can provide guidance for decision-making and reference the full policy as the resource for additional information.

Visible and easily accessible

Reducing our 24-page document into a single-page document was a radical step that has made our SOC much more visible and accessible. The new SOC has been printed like a poster and placed throughout our campus, has been posted on the company's intranet (where it can be easily printed and produced when needed by employees), and has been turned into an ID badge that all on-site employees wear every day.

Most importantly, however, is that the content of the single-page SOC is easy to break down for use and reference by our employees. The document is broken into four sections:

1. An introduction paragraph that explains what the document is;

2. An introduction from our CEO, including Millennium Health's three core pillars;

3. The 12 standards of expected behaviors for all Millennium Health employees; and

4. The contact information for the Compliance Department, Compliance Hotline and an email.

Memorable and sticky to guide decision-making

Why do people remember certain things and forget others? To increase the potential for people to remember compliance principles, the information should be:

- Memorable. Easy to remember, catchy, or tied to something that people already know and remember.

- Owned. Every department should have ownership so the initiative isn't seen as compliance-only, but rather as one owned by the entire organization.

- Short. The longer it is, the more likely people will forget or embellish it; keep the message short.

- Repetitious. The more contact your employees have with a piece of information, the easier it is to commit to memory.

- Enforced. Knowing and following the standards should be understood as mandatory, and failure to do so can negatively affect continued employment with the organization.

For the Millennium Health SOC, we used our existing Business Code of Conduct and a review of other applicable risk areas to create our standards of expected behavior. We set out to identify 12 standards. Why 12? Because everyone knows that's how many months there are in a year. If we could promote the correlation between the calendar and the SOC, our employees would remember that there are 12 standards. However, it is difficult to memorize 12 of anything—that is where our catchphrases come into play.

We broke out the entire organization into 12 groups and assigned each group one standard to develop a catchphrase for that would capture the essence of the full standard. The only rules were that they had to capture the essence of the standard and be short and clever enough to be easily remembered. The organization did well with this exercise, and the resulting catchphrases were clever, creative, and memorable.

One of our departments provided this catchphrase to address the obligation and right of all employees to report suspected compliance concerns: *Suspect Something, Say Something.* The obligation to report suspected noncompliance is a critical component of an effective compliance program that enables organizations to identify and address potential problems when they are first suspected. As such, *Suspect Something, Say Something* became a core component of the Millennium Health Compliance Program and a theme that we wanted to integrate into our lexicon. This catchy and short phrasing is similar to multiple campaign slogans used to promote awareness and encourage reporting, making it familiar and easy to remember.

The plan for departmental involvement did not end with creating catchphrases. Instead, the standard assigned to each department is now "owned" by the department, and each month of the year will highlight a different

department along with their standard. As part of this promotion, there are reminders that every person at Millennium Health is expected to know and comply with the standards. In addition, by assigning ownership, we are shifting perceptions of the SOC from a Compliance Department document to one that is owned by all departments of the company.

Our goal for 2020 is to fully promote and integrate our SOC and the repetition of the 12 standards in our day-to-day operations, and those efforts have already begun. Each month, every employee at Millennium Health must complete a single-question SOC exercise that asks the same question: "Which of the following is NOT one of our 12 Standards?" The multiple-choice options include three actual standards and one incorrect standard, which is corrected once the user has selected an answer. The objectives of this exercise are increasing access to the SOC and familiarity with the SOC on the theory that more exposure and experience with the SOC will drive knowledge and understanding. This way, we are exposing people to four correct standards, meaning that at the end of 2020, all employees will have seen each of the 12 standards four times just by completing the monthly exercises. We will also be able to document the number of "hits"—times the employees have accessed the SOC on the intranet. We are also attempting to monitor which respondents correctly identified the wrong standard on the first attempt to determine whether they've improved over the year. The hope is that this information will provide tangible, objective data about the organization's awareness and knowledge of the Millennium Health SOC.

Additional promotional efforts of the SOC are underway. Each month, the designated standard leads the banner on our intranet homepage with links to the policies that support it. In addition, our departments are helping to promote the 12 standards by incorporating them into their weekly emails or departmental newsletters.

To further promote and evidence the organization's commitment to compliance, we plan to tie our meeting objectives and topics to our SOC. To test this, we took our SOC to an operational meeting and attempted to tie every topic to one of our 12 standards. We found that we were able to do so seamlessly. For example, saying, "This topic ties to standard X, [standard catchphrase]" does not lengthen the meeting; instead, it repeatedly ties organizational decision-making to the SOC. This is incredibly powerful, particularly when it is the CEO or the board driving the connection between the meeting topic and the SOC. We intend to drive this example through all departmental levels of the organization so that our corporate-wide commitment to complying with the SOC becomes evident to all Millennium Health employees.

Conclusion

When the compliance program guidance was first rolled out, two SOC expectations were established for healthcare organizations: (1) the SOC must provide guidance to the employees of the organization, and (2) the SOC must address the key risk areas for the organization. Somewhere along the way, the expectations were interpreted to mean a lengthy SOC was required. However, there is no written guidance that dictates the length of an SOC. History, along with our own experiences, has shown that the traditional, lengthy format of the SOC should be reconsidered and improved in a way that would enhance real decision-making guidance for employees. Maybe it is time to rethink what has become the norm and turn to a simplified, single-page SOC that addresses all required elements; provides guidance that can be incorporated into the daily decision-making process; and creates a medium through which all areas of the organization can develop ownership, awareness, and, ultimately, compliance. We have tested the concept of the single-page SOC at Millennium Health and, to date, have been pleased with the positive reception by employees, leadership, and the board of directors. We anticipate that our streamlined SOC will help our organization achieve its overall mission and adhere to its corporate values. We are hopeful that other organizations will join this simple revolution to make their SOCs more accessible, memorable, and usable.

Takeaways

- The standards of conduct (SOC) document, also referred to as a code of conduct, outlines the core behavioral expectations of the organization.

- Lack of awareness of an SOC can result in employees basing decisions on their own idea of standards

instead of relying on the organization's SOC.

- The SOC should provide guidance for daily decision-making and create a medium through which all areas of the organization can develop ownership, awareness, and compliance.

- The SOC should be easily accessible, memorable, and "sticky," so employees will remember and reflect upon it when making decisions.

- A single-page SOC can meet all of the expectations of the compliance program guidance and serve as memorable, meaningful guidance for employees.

1 Publication of the OIG Compliance Program Guidance for Hospitals, 63 Fed. Reg. 8987, 8989 (Feb. 23, 1998).
2 Publication of the OIG Compliance Program Guidance for Nursing Facilities, 65 Fed. Reg. 14,289, 14,292 (March 16, 2000).
3 65 Fed. Reg. 14,289, 14,292 (March 16, 2000).
4 U.S. Department of Health and Human Services Office of Inspector General and Health Care Compliance Association, *Measuring Compliance Program Effectiveness: A Resource Guide*, March 27, 2017, http://bit.ly/2V8dajN.