Covenant Model of Corporate Compliance

"Corporate Integrity" Program Meets Mission, Not Just Legal, Requirements

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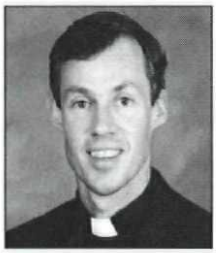

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Medicare compliance is a top priority for the U.S. Department of Justice, and enforcement of Medicare regulations is the basis for its Operation Restore Trust. The Office of the Inspector General (OIG) has targeted 4,660 hospitals to audit for overbilling, with only about 800 contacted to date. Hospitals and healthcare systems are establishing compliance programs and appointing compliance officers to ensure that they are following all reimbursement laws.

The many compliance models available focus more or less exclusively on Medicare reimbursement. This article proposes a more comprehensive model that reflects the mission dimension of faith-based healthcare. It comes from a somewhat unlikely source: corporate America. I offer this model because Catholic providers can benefit from its ideas on how to respond best to intense Medicare oversight. More important, the issue of compliance raises the opportunity for healthcare ethics programs, with their traditional emphasis on clinical issues, to explore new models for creating an ethical corporate culture.

Clinical and Corporate Ethics

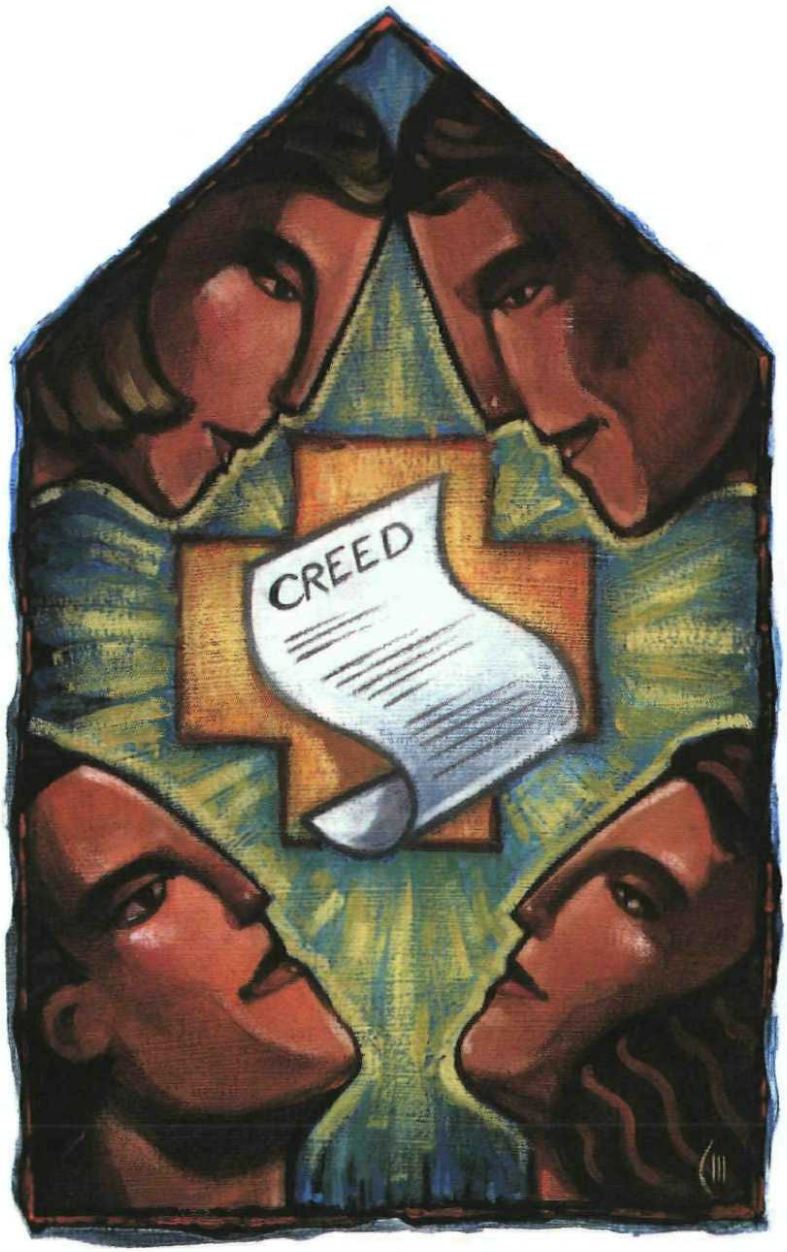
In Catholic healthcare settings, ethics is usually the responsibility of the mission or pastoral care department.[1] In institutions that have an ethicist, that person is often a director who reports to a vice president, usually of mission. In both situations, ethics or the ethicist operates within the clinical realm. Even in healthcare systems where the ethical emphasis goes beyond the clinical, clinical ethics often remains the core of the ethics program. Historically this makes sense. Ever since the New Jersey Supreme Court urged hospitals to set up ethics committees, as a result of the *Quinlan* case in 1976, the focus of ethics programs and committees has been on clinical practice.

Ethical concerns also influence the practices of for-profit corporations, as shown by the top ethical businesses cited annually in *Business Ethics*.[2] These corporations may have chief ethics officers[3] or top-level managers committed to ethics. Medtronic, developer of a new pacemaker-like device used to control Parkinsonian tremors, found its ethical leadership in the commitment of its board of trustees chair.

Does corporate America have a model ethics program that Catholic healthcare might find useful?

Summary Catholic healthcare should establish comprehensive compliance strategies, beyond following Medicare reimbursement laws, that reflect mission and ethics. A covenant model of business ethics—rather than a self-interest emphasis on contracts—can help organizations develop a creed to focus on obligations and trust in their relationships.

The corporate integrity program (CIP) of Mercy Health System Oklahoma promotes its mission and interests, educates and motivates its employees, provides assurance of systemwide commitment, and enforces CIP policies and procedures. Mercy's creed, based on its mission statement and core values, articulates responsibilities regarding patients and providers, business partners, society and the environment, and internal relationships. The CIP is carried out through an integrated network of committees, advocacy teams, and an expanded institutional review board. Two documents set standards for how Mercy conducts external affairs and clarify employee codes of conduct.



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Self-Interest Versus Covenant

It helps to look at the development of the business ethics concept.[4] Two models of business ethics are dominant in corporate America today: the self-interest model and the covenant model.[5]

The purpose or goal of business in the *self-interest model* is primarily, if not exclusively, to maximize returns. The main mode of operation is the contract. All business affairs, including individual interactions, are conducted in accord with and within the limits of the law and local customs. Medicare compliance programs, for example, aim to ensure that all parties follow the contractual agreements related to reimbursement. This model's driving assumption is that the pursuit of corporate self-interest in the marketplace is the best way to maximize profits. The primary means to achieve this corporate goal at the lowest or most cost-effective rate are tangible efficiency measures.

The *covenant model* differs significantly and influences the operations of the top-100 ethical businesses. The purpose of business in this model is "value creation," or fulfillment of a social contract. Simply creating jobs and making a profit are not sufficient justifications for being in business. Some social good should evolve from the enterprise. For example, Avon's Breast Cancer Awareness Crusade has raised $16.5 million for community education and early detection services since 1993.

Quality of Relationships Rather than through contracts, the covenant model conducts business within the realm of *covenant*, meaning business decisions are made with an awareness of their impact on corporate relationships. Beyond conforming to contractual or legal expectations, the right decision enhances or promotes the quality of the affected relationship and may go beyond the requirements of the law.

Corporations that follow the covenant model often have a *creed* to ensure a focus on the quality of relationships. Whereas a mission statement outlines the corporation's identity and purpose, a creed clarifies its professional obligations and the relationships addressed. The creed may also prioritize those obligations.

Mission in Marketing The covenant model's driving assumption is that fidelity to mission will ensure the mission's continuation. In short, the way to profitability is through mission. Suspicion of this assumption has long made socially screened investments a "stepchild" of the stock market; they were acceptable unless you wanted to make money. It is now widely acknowledged that conducting business according to a strong ethical code can be profitable.[6]

More corporations are adopting a socially responsible way of doing business and finding it makes good business sense besides being a right way of acting.[7] Avon's sales have grown since the company made its social contract with women's health. Tom's of Maine discovered fidelity to mission makes good market sense when, against strong arguments from marketing staff, it refused to add saccharine to a new baking soda toothpaste to improve the taste.[8] Doing so would have violated the company's commitment to all-natural ingredients, but it was judged to be the only way to make the product marketable. Mission prevailed, and the product was a success.

Trust in Relationships When a corporation faces a problem, one option is to address it according to the norms of efficiency and expediency. The covenant model addresses the problem from the perspective of fidelity to relationships.

Tom's of Maine had two choices regarding a defective new deodorant in 1992: (1) leave it on

the market while introducing a better product and deal with dissatisfied customers individually, or (2) recall the defective stock and replace it with new merchandise at a cost of $400,000. As the CEO stated, "We had a genuine moral dilemma—profit versus values."[9]

The first approach would have been less costly, allowing sales to continue while solving the problem and also avoiding an expensive recall, which is generally an expensive way to resolve most product problems. The faulty item usually makes up a relatively small percentage of inventory or negatively affects a small percentage of consumers. The second option mirrored the covenant model's emphasis on fostering trust with its customers over cost-effectiveness and efficiency. Leaving defective merchandise on the market rather than replacing it can weaken that trust, even if ultimately sales level off or improve. The recall option was agonizing and costly but inevitable.

The tainted Tylenol incident in 1982 provides another example. The business question for Tylenol's maker, Johnson & Johnson, was whether a total or limited recall was the best response. Johnson & Johnson has a four-tiered creed that puts customers first and stockholders fourth. A total recall would have damaged one of its corporate relationships but would have shown the firm's commitment to product safety. Johnson & Johnson chose trust over stock value and ordered a total recall as the option most compatible with its covenant model.

Corporate Integrity Program

Since the covenant model is most compatible with the Catholic not-for-profit healthcare ministry, why would Catholic facilities respond to OIG oversight with the self-interest model's emphasis on contracts? Many institutions are modeling a narrowly focused corporate compliance strategy based on the legal contractual reimbursement criteria of Medicare.

Instead, Catholic healthcare should consider a comprehensive corporate integrity program (CIP), using the covenant model to achieve a corporate culture that bases clinical, operational, and human resource decisions on the quality of relationships. The measure used to determine the quality of these relationships would be the organization's core values. If justice is a core value, for example, a staff reduction policy would not only reflect staffing needs but also establish a just organization-staff relationship. The right staff reduction policy would be the one that is most defensible according to obligations of justice owed to staff.

A more comprehensive approach may mean expanding an ethics program's traditional role and structure and crafting new models for ethical issues.

Mercy's Approach Mercy Health System Oklahoma (MHSO) assigned its newly formed system Ethics Committee the task of crafting a CIP based on the covenant model. The committee determined that the CIP had to achieve the following goals to be successful:

1. Promote MHSO's mission and motivate employees and medical staff to follow mission standards.
2. Educate employees and staff about mission and the CIP.
3. Provide assurance through policies and procedures that staff is committed to Mercy's objectives.
4. Promote MHSO's interests by strengthening the Mercy mission and the Catholic moral tradition that informs it.
5. Enforce CIP policies and regulate the professional and corporate behaviors of those associated with Mercy.

The committee then determined the CIP's scope by defining those relationships to which MHSO has a particular obligation.

Mercy's Creed: Four Relationships

After examining our mission statement and core values, we at MHSO determined that we had four primary relationships to consider: patients and providers, business partners, society and the environment, and ourselves (see **Box**, p. 73).

Patients and Providers Our first responsibility is to those we serve: patients, medical staff, and those who access healthcare through Mercy. From these relationships emerge the concerns of **clinical ethics**, the traditional role and priority of healthcare ethics.

Managed care reinforces the need for ethics programs to inform and protect the quality of care we provide.[10] Similarly, ethics provides the needed responses to the expanding use of "telehealth" and its impact on confidentiality.[11]

The MHSO Institutional Review Board (IRB), generally more a part of medical services, must be more active in an ethics program through clinical ethics. Ethics directors too often have no input in

naming board members or do not participate fully in the IRB. Also, IRBs usually focus solely on Food and Drug Administration regulations. They need to broaden their ethical role and address such concerns as the exclusion of certain populations from a research protocol.

Business Partners The second relationship involves **business ethics,** the study of ethical issues related to how we conduct business affairs with others.[12] This is the OIG's particular area of concern.

Fidelity to our business relationships, not simply reimbursement regulations, guides us when we do not defraud the government by inappropriately unbundling services or do not defraud insurance companies by keeping patients longer than necessary. Length of stay is not merely an issue for the utilization review committee. If Medicare, an insurance company, or a patient is paying healthcare costs, we should provide only and all the care that is medically indicated.

Business ethics also addresses concerns about investments and purchasing. The MHSO Ethics Committee oversees local implementation of the Socially Responsible Investment Policy and Socially Responsible Purchasing Policy initiated by Sisters of Mercy Health System (SMHS)–St. Louis. After an educational forum on the Socially Responsible Purchasing Policy for the materials management personnel, the committee decided that the development of purchasing contracts should include an exchange of mission statements and creeds, if applicable. Such a practice maintains a focus on commitment to integrity, rather than the tangible efficiencies of deal making.

Society and Environment The third area of relationships involves **social ethics**, the study of ethical issues related to how we interact with the broader community and our environment. MHSO began

CREED—MERCY HEALTH SYSTEM OKLAHOMA

WE BELIEVE our first responsibility is to those we serve.
We respect the *dignity* of all those we serve, focusing on *excellence* in medical care for the benefit of each patient. We do not ask for whom we will care, but how we can care for all those who choose *MERCY*. We are available and responsive to and truthful and honest with our patients. We recognize them to be, with family and friends, the primary decision makers in their care. We respect and honor their decisions insofar as our Mission and ethical tradition allow. We protect the privacy of everyone's medical history.

WE BELIEVE we have a responsibility to those with whom we do business.
We act with *justice* in all our business dealings. We choose vendors and partners on the basis of their compatibility with our Mission and ethical tradition, product quality, delivery system, and appropriateness of rates. We neither invite nor accept preferential treatment for inducements, nor make demands on others to support any goal of *MERCY* beyond those required for us to provide quality care. We invoice only for services we actually provide.

WE BELIEVE we have a responsibility to our local and world community.
We commit ourselves to wise *stewardship* in the use of our own resources and those of the community. We seek to be good citizens by fulfilling our civic obligations and advocating on behalf of those who entrust themselves to our care. We seek to be good neighbors by respecting the needs and concerns of those with whom we share local resources. We protect the resources of our earth by reducing, reusing, and recycling wherever possible. We endeavor to create a climate of trust by disclosing in a timely way information about *MERCY* which the community has a right or need to know. We present ourselves to the public in a way that fairly and accurately represents ourselves and our capabilities.

WE BELIEVE we have a responsibility to ourselves.
We strive to create an open and safe environment for all who dedicate themselves to be of *service* at *MERCY*. We strive for policies and procedures that are justly crafted and fairly implemented. We do not discriminate in favor of or against any member of the *MERCY* family for any real, perceived, or imagined difference that distinguishes us from one another. Diversity in the workplace shall be a point of pride.

All who perform comparable work enjoy comparable benefits. No incentives, discounts, or professional courtesies are extended to employees of or agents working within *MERCY* which give the appearance of being an inducement for service, or which undermine the cohesion and morale of our workforce.

Out of a sense of pride in our personal and professional reputations, and out of loyalty to the good reputation of *MERCY*, we hold each other and ourselves accountable to the standard proclaimed in this **CREED.**

setting up advocacy teams in each hospital through the CIP in 1996 and now participates in the SMHS–St. Louis advocacy program. These teams inform and educate employees on health-care delivery issues and community health issues. They initiate projects such as the "Have Mercy on Our Planet" recycling program at Mercy Health Center, Oklahoma City. Since April 1997, the program has recycled nearly 40 tons of paper, saving 674 trees and eliminating 2,380 pounds of air pollutants. An "adopt-a-can" program has now begun to recycle aluminum.

The legislative role of the CIP advocacy component, already active in helping to shape recent do-not-resuscitate legislation, will be expanded to influence such programs as the State Children's Health Insurance Program.

Internal Relationships This final area involves **organizational ethics**, the study of ethical issues related to how an organization influences its members and how members influence each other and the organization. This relatively new field of study, sometimes described as a subset of business ethics, could be the most challenging addition to an ethics program. Sexual harassment, conflict of interest, and affirmative action are legal issues that also need an ethical perspective. Other issues, such as physician incentives[13] and no-smoking policies, may have fewer legal imperatives but are critical to an organization's character.

Creed as Guarantee Having identified these relationships and obligations, the Ethics Committee then crafted the MHSO creed. This document will stand as our "warranty." Because we have responsibilities to our patients, our business partners, our community, and to ourselves, we must articulate these precisely so that all parties know we are acting on our beliefs.

Mercy's CIP: Structure, Standards

The MHSO program envisions an integrated network of committees, each with specific tasks (see **Figure**). The system Ethics Committee crafts and coordinates the CIP as a whole. Each MHSO facility has an institutional ethics committee, whose primary task is to address clinical ethical issues. Each institutional ethics committee also coordinates the educational efforts in other areas. The system IRB oversees all clinical research in the system.

The Business/Organizational Ethics Group consists of the MHSO's ethicist and a vice president from each facility and the Mercy Health Network. These persons are designated as "assurance coordinators," as opposed to compliance officers, to emphasize the CIP's basis within the covenant model, not a contract model. Having a separate group dealing with both business and organizational ethics allows immediate administrative action for such issues as Medicare compliance. Also, some concerns may require greater confidentiality than can be assured by the Ethics Committee or the local institutional ethics committee, especially when an employee wants to report suspicious activity.

The MHSO Advocacy Team comprises repre-

sentatives from each facility's teams and coordinates their activities. The primary focus is employee education and involvement. On the state level the Advocacy Team works with other organizations (e.g., Catholic Charities) for healthcare reforms to benefit poor and underserved populations.

Clarifying Standards The creed clarifies to outside parties what they can expect from MHSO. To be effective, the CIP must also educate its members and MHSO employees on what they can expect from each other. To address this issue, the Ethics Committee has crafted two documents. The *System Ethics Statement*, modeled after one written for Mercy Health Center three years ago, sets the standard for how MHSO conducts its external affairs (e.g., marketing, resolving conflicts of interest, providing protective services).

The second document, *We Are Mercy*, presents a consistent standard of conduct for all employees, medical staff, and agents, and also serves as a means to motivate and monitor such conduct.[14] Codes of conduct are common in corporate America, with adherence to standards a part of each employee's annual performance appraisal. *We Are Mercy* serves that same role at MHSO, addressing such ethical concerns as personal and corporate gifts, gratuities, confidentiality, and professional language. Rather than signing a confidentiality affidavit with the annual review, employees sign this document to show they have read and understand it and will adhere to workplace integrity.

Emphasizing Accountability Integrity, and thus the CIP, cannot exist unless individuals exercise accountability. The professional reputations of everyone at MHSO are intertwined; if Mercy does not have a reputation for integrity, each employee is affected, and vice versa.

Accountability does not mean engaging in childish tattletale practices to get someone in trouble. Accountability literally means "to explain." When reputations are on the line, individuals must be ready to explain the integrity of their action. Whether integrity is intact or compromised and needs work, a reputation for integrity is enhanced. Each employee must be held accountable and hold others accountable.

Accountability requires freedom from reprisals and harassment, whether or not the complaint proves to have merit. The MHSO CIP emphasizes a commitment not to discipline any employee who holds another or the system accountable. In addition, MHSO pledges not to tolerate harassment by other employees whose work may be affected by a complaint. The CIP provides for public, anonymous, or confidential modes of accountability. MHSO must also be held accountable if it fails to engender trust in its commitment to integrity.[15] □

NOTES

The following sources provide further explanation and discussion of the issues throughout the article.

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