

Avoid Whistleblowers with Credible Compliance Channels

By [Richard Kusserow](#) | February 2017

Most DOJ/OIG Cases Initiated by “Whistleblowers”

The Federal government and many state agencies encourage reporting potential violations through their reporting systems. As a result, most Department of Justice (DOJ) health care cases come from [qui tam relators](#) (whistleblowers) filing cases directly with the DOJ. In 2016 alone, there were 702 *qui tam* suits filed, an average of about 14 new cases a week. From a total of \$4.7 billion civil fraud settlements and judgments, \$2.5 billion were from health care entities. In addition, nearly a quarter million whistleblowers contacted the OIG directly or through their hotline during the same period. A substantial percentage of people directly contacting government agencies do so voluntarily because they believe reporting through the company hotline will not be well received or acted upon appropriately. To reduce the likelihood of external whistleblowing, it is critical to promote internal reporting and convince the workforce that the organization will take their complaints seriously and act upon their information through appropriate channels. The existence of this avenue of communication can reassure people that their problems and concerns can be addressed internally without any need to go externally.

Compliance Communication Channels

The OIG, U.S. Sentencing Commission, DOJ, and other authorities call for hotlines to:

- Permit employees to report anonymously;
- Offer confidentiality for those that identify themselves; and
- Warrant non-retaliation or reprisals for reporting potential violations of law, regulation, Code or policies.

Virtually all health care entities maintain a hotline for reporting wrongdoing and channeling employee concerns, allegations, and complaints to “in house” staff for resolution. Failure to offer, encourage use of, or act upon information provided by this compliance channel of communication creates a serious risk of increased exposure to liabilities. If employees cannot or do not feel comfortable reporting internally, they can do so outside the organization. These channels of communication prevent health care entities from media scrutiny as well as conflicts with government agencies. No health care entity wants to have their dirty laundry covered in the press; have employees file actions with an attorney; or have problems directed to government agencies.

Good Business Practice

Encouraging internal reporting can lead to identification of emerging issues. An organization can solve these issues before they escalate into potentially larger problems and cause more damage; or employees look externally for a solution with an attorney, government agency, or media.

Hotlines can also serve a variety of social purposes, such as permitting employees to vent their frustrations without reporting any material wrongdoing or to seek clarification on policy questions. These non-substantive calls provide insight into employee morale, workplace problems, and management issues. In the worst case scenario, an employee believes no one inside the organization will address his or her concerns and therefore feels that resolution will only come from reporting the problem to external authorities.

Multiple Compliance Communication Channels

The OIG calls for multiple compliance communication channels, but hotlines are by far the most important for effective compliance programs. Employees may differ on their [preferred method of reporting compliance concerns](#), but best practices include offering both a live operator hotline and web-based reporting. Among the avenues are the following:

- **Hotlines.** Live operators are the preferred method and encouraged by enforcement agencies. This permits callers to speak to a live person to tell the entire story. This interaction provides optimum results in sorting out issues during the call. It also permits individuals to vent to someone without necessarily reporting wrongdoing.
- **Recorded Messages.** Compliance communications relying upon callers to leave a recorded message or report is a bad practice, as they do not permit debriefing of the caller. Also, callers are not likely to leave anything sensitive on a recorded message. In most cases, callers who leave messages will provide only limited information and likely leave out critical details. Finally, the call source might be traced, thus denying anonymity.
- **Email Reporting.** This is not an ideal compliance communication channel practice, as it is not a secure system. The information received is often coming from a known source, thereby compromising anonymity. It also means callers can claim confidentiality with the entity bearing the burden of protecting them.
- **Web-based Reporting.** Most of those reporting potential wrongdoing still prefer operator answered hotlines, but the millennial has been conditioned in using social media and appears more comfortable with using web-based reporting systems. They can take their time in composing and reporting their concerns and thoughts. For many, web-reporting is less intimidating than talking to an operator.

In House vs. Vendor Hotlines

Operating a hotline internally is not a best practice. It is not practical to manage live operator systems 24/7, and the cost of operation is prohibitive. Most hotlines are operated by [vendors](#) because:

- They permit employees to report 24/7, which is not possible for an internally operated system;
- They are less expensive than internally operated programs, as costs of operation are amortized over many organizations;
- Vendors have more experience in managing whistleblowers;
- Most employees believe a hotline or reporting system, independently operated by a third party, is more trustworthy than one operated by the employer; and
- They are able to provide insightful hotline data, report of caller debriefings, and trend analysis.

Learn About Our Hotline Service Center

If you are interested in setting up a confidential compliance hotline with web and telephone-based reporting channels, visit our [Hotline Service Center](#). A compliance expert can provide a 30-minute demonstration of our reporting modules and detailed compliance reports.

Looking to for additional solutions? Visit our Compliance Resource Center for articles and information regarding [healthcare compliance software](#).