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Partner

GRANITE GRC

**Compliance
Convergence –
Mastering DOJ’s
Guidance on
Incentives and Claw
Backs**

October 24, 2024



Our presenters



Clivetty Martinez

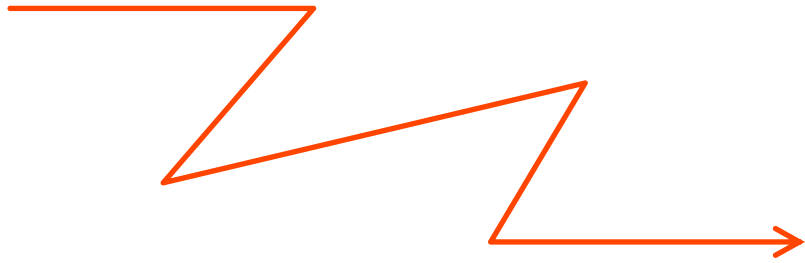
Granite GRC



Brett Smith

Moderator, NAVEX

Agenda



- Meaningful penalties and consistent application
- Financial incentive systems and alignment
- Overview of the DOJ and compliance guideline and significance
- Group discussion
- Read out and conclusion

1. Meaningful penalties

- What are “meaningful penalties” in the context of DOJ’s Guidance for enforcement actions?
 - Deter misconduct
 - Promote compliance
 - Recover losses
- Consistent application across the organization
 - Fairness and transparency
 - Strong deterrence
 - Improves culture of compliance

1. Meaningful penalties

2. Financial incentives

- The DOJ recognizes the power of financial incentives to influence behavior
- Doing so means aligning executive interests with good corporate citizenship and compliance
- This can result in:
 - Reduced risk
 - Long-term sustainability
 - Promotes a culture of compliance
- Consequences of non-compliance should be:
 - Direct
 - Tangible

1. Meaningful penalties

2. Financial incentives

3. OIG compliance guidelines

- The DOJ Guidance highlights the integrity of compliance programs through enforcement actions
- OIG's 7 Elements Compliance Program Guidance helps healthcare companies build strong compliance programs
- Following the DOJ guidance demonstrates a commitment to the OIG's 7 Elements to prevent misconduct

What does the guidance say?

Financial incentive system

1. Has the company considered the impact of its financial rewards and other incentives on compliance?
2. Has the company evaluated whether commercial targets are achievable if the business operates within a compliant and ethical manner?
3. What role does the compliance function have in designing and awarding financial incentives at senior levels of the organization?
4. How does the company incentivize compliance and ethical behavior?
5. What percentage of executive compensation is structured to encourage enduring ethical business objectives?
6. Are the terms of bonus and deferred compensation subject to cancellation or recoupment, to the extent available under applicable law, in the event that non-compliant or unethical behavior is exposed before or after the award was issued?
7. Does the company have a policy for recouping compensation that has been paid, where there has been misconduct?
8. Have there been specific examples of actions taken (e.g., promotions or awards denied, compensation recouped or deferred compensation cancelled) as a result of compliance and ethics considerations?

Benchmarking check

We're in this together

- Throughout this presentation we will be taking several polls to:
 - Arm you with information on industry trends
 - Share golden nuggets to solve what keeps you up at night
 - Uncover pain points need to be shaved down so they're not so pointy

To get started go to
pollev.com/navexeevent050



Have you discussed this with your compliance committee?

Yes 0%

Yes, but minimally 0%

Not yet 0%

Not planning on it 0%

Other 0%

How clear is the guidance related to claw backs and financial incentives?

Perfectly clear (glass of water) 0%

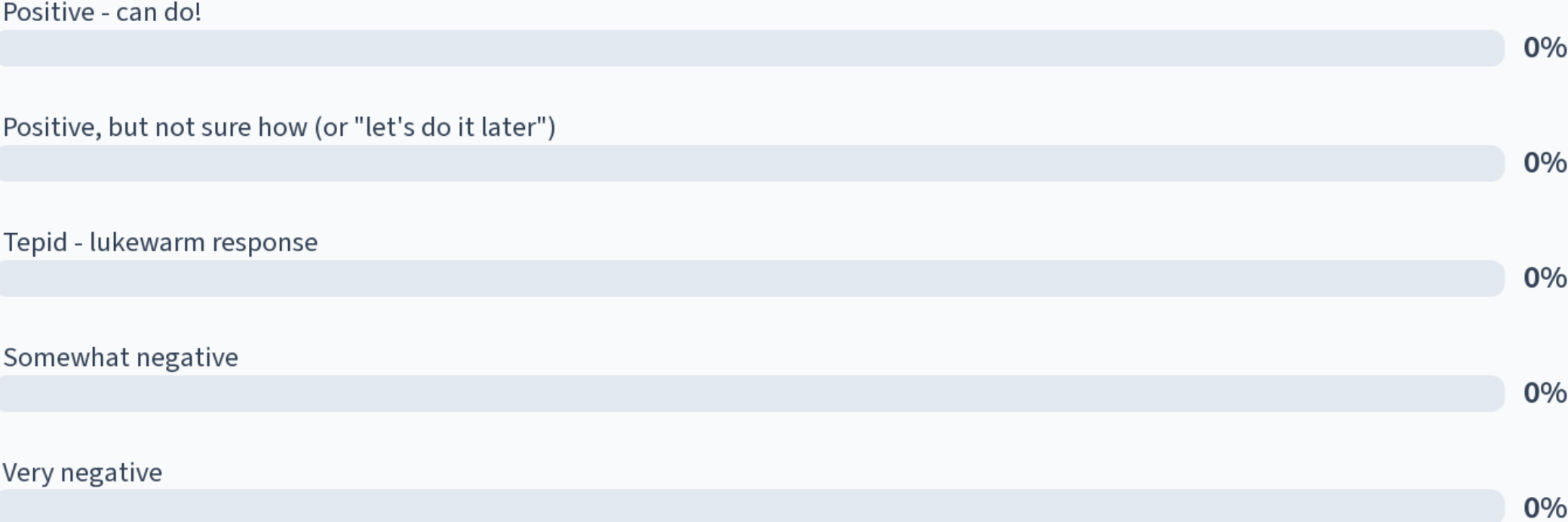
Somewhat clear (lemonade) 0%

Not very clear (coffee, no cream) 0%

Mud 0%

Other 0%

Response of the compliance committee/leadership on the compliance guidance related to clawbacks and incentives?



OIG enforcement

2023 Semi-annual Report to Congress

707

Criminal enforcement actions against individuals and entities suspected of crimes targeting HHS programs

746

Civil actions, including false claims lawsuits, settlements and administrative recoveries

2,112

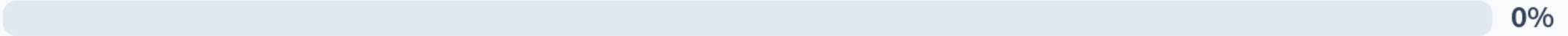
Individuals and entities excluded from participation in federal healthcare programs

**\$3.44
billion**

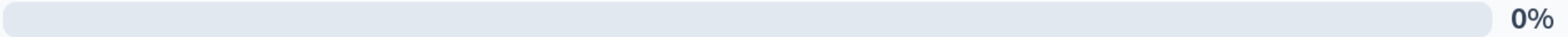
Amount the HHS-OIG's efforts in
expected recoveries, according to
latest report

What has been the response when you discussed financial incentives and claw backs with leadership?

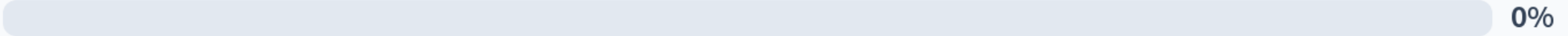
Impossibility



We need to find a way to do it, but it can be done



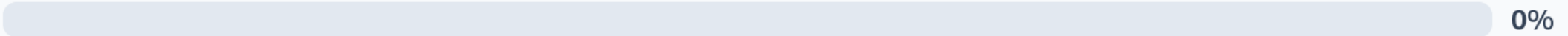
We are working on it and have some ideas



We implemented a pilot



We have it figured out and it's working well



Group discussion

Discussion questions:

Financial incentives and clawbacks

1. How can healthcare organizations ensure their financial incentive systems are aligned with compliance goals?
2. Share best practices for developing and implementing effective "consequence management procedures."
3. What are the biggest challenges you face: is it financial incentives or claw backs?
4. How can we effectively communicate compliance requirements that these incentives and clawbacks are not negotiable?
 - a. Create a role-play scene where a compliance officer is presenting the requirement that the company must implement incentives and clawbacks
 - b. Choose different people around the table to play the role of different compliance committee members
 - c. Write down what each member of the committee will be saying in order to look after their own interests. What will they say to "push back" on this new initiative
 - d. What can the compliance officer respond to each of the different committee members to convince them to help.

For additional resources

Download our toolkit using the QR code below



Thank you!

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