



# Known and Unknown Unknowns: Compliance, Risk Aversion, and Change

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Sage Squirrel Consulting, LLC  
August 1, 2019

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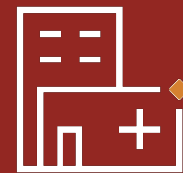
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# Known and Unknown Unknowns



“There are known unknowns. These are things we know. There are known unknowns. That is to say, there are things we know we don’t know. But there are also unknown unknowns. There are things we don’t know we don’t know.”

- Donald Rumsfeld



# Who is at Risk for Risk Aversion?

We all work in a highly regulated arena:

- Medicare and Medicaid
- State code and administrative rules
- Health and safety regulations
- Financial requirements
- Human resource laws
- License and certification requirements





## Regulators are “Regulatees”

- To providers, state entities may appear to be the primary regulators
- Those regulators are also regulated entities, usually by federal agencies
- Federal agencies work under myriad requirements



## What do we mean by “Risk Averse”?

- Compliance becomes the primary goal
- Processes are cumbersome because of redundant compliance checks
- Hypotheticals have an outsized impact on thought processes
- Excessive focus on documentation requirements
- Change averse because change is perceived as risky.
- Lack of transparency – everything is “need to know”

What are we afraid of?



Are we afraid of running afoul of regulations, the consequences of running afoul of the regulations, or do we fear the underlying challenges and outcomes?

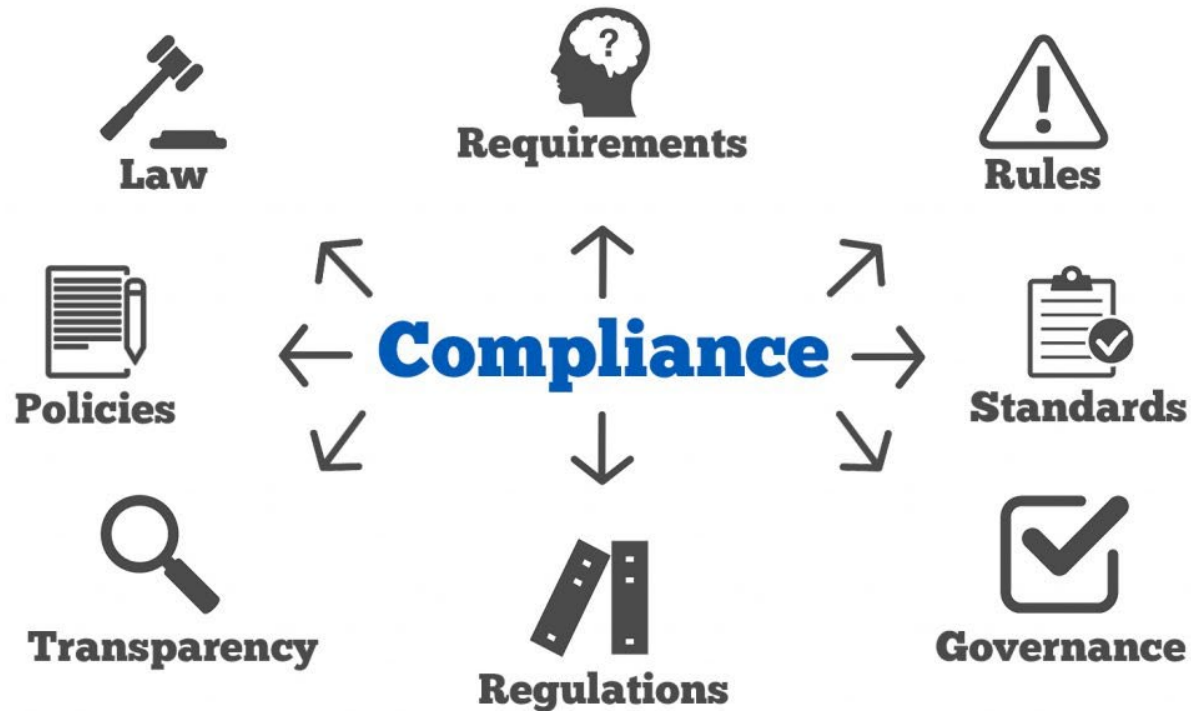
Are we afraid of change?

# What should we be afraid of?

- Not Doing the Right Thing
- Somebody Getting Hurt or Killed
- Inefficiency and Waste
- Fraud
- Missed Opportunity



# Real versus Imagined Risk



- Need to manage real risk but aiming for full risk avoidance creates paralysis
- Compliance alone becomes the goal

# Hazard versus Risk

- Neither can be completely eliminated
- Both can be managed
- Regulations generally are seeking to eliminate a known hazard or reduce a known risk



# Missed Opportunities



- When assessing risk, this is often the one that gets missed



# Role of Regulations

- Set a floor for minimizing risk
- Encourage certain behaviors
- Increase probability of positive outcomes
  
- Regulation may also be about protecting “turf”



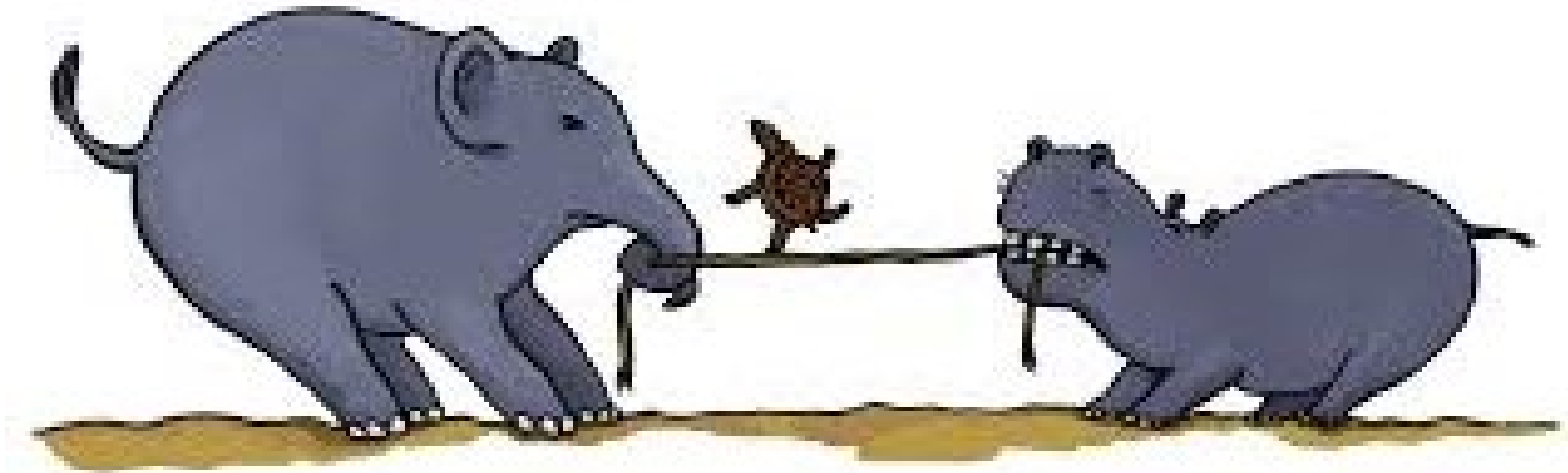
# The other side of the problem

- Regulators themselves can get carried away
  - Excess focus on specific documentation
  - So focused on letter of regulations and can lose the bigger picture
  - Inconsistency
  - Appearance of arbitrariness



# Competing Regulators

- Health care licensure requirements versus Medicaid
- CMS Settings Rule versus GAO call for more monitoring of health and safety in settings like group homes and assisted living

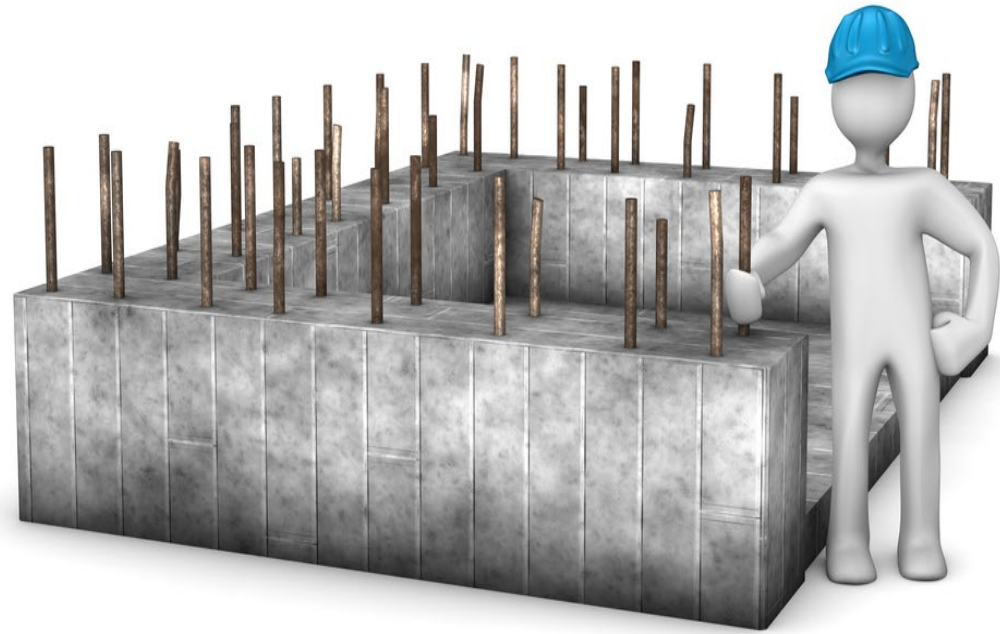


# Compliance Myths

- Regs can take on a life of their own – “myths” develop
- Regulator inconsistency exacerbates this
- HIPAA source of many myths



# Compliance is the Foundation



- Necessary to build on
- Things fall down without it
- But it isn't much on its own

# Beyond Compliance?

- Difference between compliance and quality (excellence)
- Elimination of risk does not equal excellence
- Regulations create opportunity –
  - Settings Rule
  - EVV
  - 5 Star (OASIS/CAHPS)



# Person Centered Practices



# Risk is Necessary

- Playing it safe inhibits innovation
- Risk leads to learning!
- Productivity does not improve without risk
- Transformation *requires* risk





# Moving Forward

- Create a “culture of failure”
- Use regulations to develop a consistent operations framework
- Reduce variability
- Aim for excellence and compliance will come more easily



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Thank you!



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