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Compliance *TODAY*

August 2013

A PUBLICATION OF THE HEALTH CARE COMPLIANCE ASSOCIATION

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Q: Who is HCCA's 8,500th member?

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by Gail Peace, MBA, MHA

Active management: The new frontier for hospital compliance

- » Active management is the new frontier for compliance.
- » Large settlements abound when organizations do not follow their own agreements.
- » Physicians payments require complete documentation, organizational audit, and fair market value updates.
- » Confirm physician payments are correct before making them – avoid these pitfalls.
- » Automation is an option to improve success and reduce direct costs.

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All physician alignment strategies, from medical directorships to employment, are formalized with written agreements. The agreements between hospitals and physicians garner much scrutiny from regulating bodies. Because the physician is a referral source, it is important the relationship fit within the exceptions for the Stark Law, the Anti-Kickback Statute (AKS), and civil monetary penalties (CMP). Today most hospitals follow appropriate checks and balances to ensure their agreements fall under an exception at the time they are developed. Few have the systems and processes to make sure the agreement is being followed in practice and over time.[1]

Peace

Following your own rules is quickly becoming the new frontier for compliance, with multi-million dollar settlements occurring when documentation does not support the agreement. In this article we explore the common pitfalls to active management and best practices to ensure success and compliance.

What is active management?

It is important that the agreements not only fit within the exceptions at the start, but are also followed over time. If the agreements are not re-examined regularly, an agreement may fall out of an exception status. Active management is reviewing the agreement and the work in real-time and each time a physician payment is made. In the most simplistic terms, active management is defined as doing what you said you were going to do.

Outside regulatory agencies are giving more scrutiny to what occurs within the practice after the agreement was setup. The demand from outside regulatory agencies is to show documentation supporting that the duties as outlined in the agreements are being performed and that the physicians are being compensated fairly. This opens a whole new can of worms related to documentation, operations, compliance, and auditing.

Why is active management the next compliance frontier?

In any agreement, compensation is rendered for services provided. The question becomes: Can you prove to your organization and regulators that the physicians have accomplished the duties as specified? And, if so, do you have documentation for it? Because hospitals are now consistently setting up the agreements appropriately, recent settlements have moved on to "proof" of outcomes and a defined audit trail.

A recent New Jersey Department of Justice case[2] involved a multi-million dollar settlement at an academic medical center for a physician medical directorship. In the settlement, it was noted that "physicians were paid in excess of what was deemed fair market value." The real questions left unanswered from the outside are: Was the deal at fair market value when it was put in place? Was it still within boundaries after being in place for years? Was real work being performed as the agreement specified, or was the problem that there was no documentation of work being performed?

At the time of settlement, the compensation could not be defended by the work provided. Answering any of the above questions in the negative could result in a violation. In hindsight, this is an easy and avoidable problem if active management is being used.

Active management involves the monthly adjudication of work performed. As you pay the physicians each month, do you verify that the work was performed? It requires systems be in place to provide the physicians with an appropriate platform to document, and that the hospital only pay when this documentation is provided. Some hospitals pay automatically, regardless of documentation. This can be a risky practice if the documentation is not later reconciled and payments adjusted accordingly.

Building a reliable process should include a mobile platform for the physician and automation that allows the hospital to review this information regularly. Spotting opportunities before they become problems can solve these challenges.

Common pitfalls for physician payments

Here are six common scenarios that illustrate the kinds of challenges a hospital may face when administering physician agreements. The questions that must be asked are both related to the logistics of the agreement and to the actual work being performed. Most hospitals manage physician payments in a largely manual process, with paper physician time logs. Best practice today includes checking these six questions to avoid these common pitfalls and building-in automation to prevent the common paper time-log pitfalls.

1. Agreement ends, physician paid after end date

This pitfall is a black-and-white violation. The monthly physician payment must end when the agreement ends. The physician may have 30, 60, or 90 days to submit a time log, but the payment can only be for periods within the agreement. This is a Stark/AKS violation. Paper systems make it easier to fall out of compliance. Is the agreement active?

2. Physician hands in two time logs for same month

A violation occurs if a physician is paid twice for the same work. When the physician is obligated to turn in a paper log for work performed, it is easy to forget to follow this process, fall behind, or submit multiple months at once. When paper systems are used, it is easier to inadvertently pay one month twice. This can be unintentional by both parties, but it remains a Stark/AKS violation. Has this month's time log already been paid?

3. Time period for payment has passed

This can be a violation, depending upon how much time has lapsed. As defined by the hospital-physician agreement, the physician has x number of days to submit his time log. When this period is past, it is a Stark Law/AKS violation for the hospital to pay beyond that date. Legal and Compliance must be brought in to mitigate the damage. Paper systems make tracking active agreements more complicated. Has the time log been submitted within the time allowed in the actual agreement language?

4. Documentation is not complete

This is a gray area indeed, but if a physician turns in a time log with one hour documented on a specific date, but provides no additional detail, is that appropriate documentation? The most progressive systems are making it easy for the physician to maintain logs by using mobile-enabled technology to ensure full documentation is collected. Is there documentation provided by the physician on the work performed, and has the physician attested to its validity?

5. Documentation is clearly in conflict with the agreement

If the duty performed and logged is not part of the written agreement, a violation can occur. What duty, for example, does the one hour of work represent? If it represents a task not defined in the agreement, it is in conflict. If the task is not well documented, in hindsight, it can be deemed inappropriate. Does the work fulfill the agreement duties as written?

6. Payments are not part of a regular compliance program

An ounce of prevention! Compliance programs should contain an audit function where the work submitted is confirmed. Most organizations do this by having the manager of the area sign the physician time log first. They are typically more familiar with the operation of the area and can quickly confirm that the work was completed. It is important to have a formal step where Compliance also checks and compares the work submitted to the actual agreement and checks for the above potential pitfalls. Has the work been documented before payment is made and audited by leadership (including Compliance)?

Tips for success

- Physicians should only be paid by hospitals when work is documented properly.
- Invest in technology that respects the physician's time.
- Use automation to prevent common paper time-log pitfalls.
- Auditing physician time logs should be part of the compliance program.
- Review the payments monthly and the overall agreements annually.

Conclusion

Some of the above mentioned pitfalls are clearly in violation, but there is whole gray area of compliance. Compliance programs are designed to minimize the gray areas. Hospitals and hospital systems should put in place processes to ensure success for the hospital and the physician in the agreements. On the surface, a small investment in the success is warranted, with the dollars being spent on the agreement itself, rather than on a violation and related settlement costs. Best practice is to automate the process and provide a means to document in a fashion that is easy for the physician to use and respectful of his/her time. At the same time, providing an appropriate audit trail is a key success factor in surviving an audit.

1. Findings by Ludi Inc. from a proprietary client and prospect survey.
2. The United States Attorney's Office, District of New Jersey, Press Release January 24, 2013, "Major New Jersey Hospital Pays $12.5 Million to Resolve Kickback Allegations." Available at http://www.justice.gov/usao/nj/Press/files/Cooper%20Settlement%20PR.html