Health Care Compliance Institute

Issues in Academic Medical Compliance: Bridging the Great Divide

Physician Contracting Issues

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INTRODUCTION

- University Hospitals (UH), Cleveland, Ohio
  - Serves 15 counties in Northeast Ohio
  - Nationally recognized academic medical center, including leading children's and cancer hospitals (UH Rainbow Babies & Children's Hospital and UH Seidman Cancer Center)
  - 11 community medical centers; 3 joint venture hospitals; over 150 physician practice locations
  - Second largest employer in Northeast Ohio

INTRODUCTION (cont'd)

- Over 4,700 providers
- Over 25,000 non-physician employees
- Over 1,100 residents and fellows in training
- Total annual revenue of >$4 billion
- Recognized 6 times as World's Most Ethical Company by Ethisphere Institute

INTRODUCTION (cont'd)

- UH Chief Compliance Officer
  - Reports to CEO and Audit & Compliance Committee of UH Board of Directors
  - Reviews potentially higher risk physician arrangements
  - Educates on physician arrangements

PHYSICIAN CONTRACTING/REIMBURSEMENT QUESTIONS FOR DISCUSSION

1. Provider Compensation Issues
   - Faculty vs. community – what benchmarks do you use?
   - Compensation models – incentives for productivity? quality? other?
   - Incentives for research?
   - Review of compensation
     - Who reviews? (e.g., management only? legal? compliance? only agreements involving compensation over certain levels?)

PHYSICIAN CONTRACTING/REIMBURSEMENT QUESTIONS FOR DISCUSSION (cont'd)

2. Medical Directorships
   - Who reviews?
   - What are your policies? (time sheets, how detailed must they be? who reviews? who authorizes payments?)
   - How often is need for medical directorship re-evaluated?
   - Any difference in treatment for employed vs. independent providers?
   - What challenges do you face?
   - Consequences for non-compliance?

PHYSICIAN CONTRACTING/REIMBURSEMENT QUESTIONS FOR DISCUSSION (cont'd)

3. Reimbursement Challenges
   - Shift in percentage of revenue from different payers? (e.g., increases in Medicaid, decreases in commercial payer reimbursement?)
   - Increased denials for reimbursements?
   - More aggressive behavior by commercial payers (e.g., litigation for alleged fraud or non-compliance)?
   - Push back from providers

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1. Provider Compensation

a. Benchmarks
   - Compensation benchmarks by specialty/subspecialty, position, academic rank, and geographic area
     - Medical Group Management Association (MGMA)
     - Association of American Medical Colleges (AAMC) (for faculty)
     - American Medical Group Association (AMGA) (for community physicians)
     - Association of Administrators in Academic Pediatrics (AAAP)
     - Association of Administrators in Academic Radiology (AAARAD)
     - Consultant database
     - Average surveys over 5 year period to smooth out large swings in data

University Hospitals (cont'd)

- Productivity benchmarks
- "Business Judgment" Factors; e.g., need in community for specialty, competing offers, historical income, difficulty in recruitment, etc.
- Benchmarks for community physicians usually higher than academics

University Hospitals (cont'd)

b. Compensation Models
- Uniform faculty compensation plan
- Establishes procedures for base compensation and incentives
- Consistent with Fair Market Value guidelines and commercial reasonableness
- Considerations:
  - Clinical quality, patient safety, patient satisfaction and other PFP metrics
  - Productivity measures (e.g., wRVUs, professional services revenue, encounters, new participants)
- Incentives
  - Percentage of clinical base compensation
  - Productivity threshold
  - Citizenship criteria (e.g., in compliance with Code of Conduct)

University Hospitals (cont'd)

c. Review of compensation
- Higher scrutiny if $\geq 75^{th}$ percentile of benchmarks
- Must document FMV and commercial reasonableness
- Chief Compliance Officer must approve where:
  - Total Cash Compensation / wRVUs >60th percentile
  - If $\geq 90^{th}$ percentile
  - If independent third party appraisal is not unqualified

University Hospitals (cont'd)

d. Research Incentives
- Start up fee once clinical trial becomes open and active
  - Signed clinical trial agreement
  - Approved coverage analysis and clinical budget
  - IRB approval
  - Collaborative Institutional Training Initiative (CITI) training (for human subject research) current
  - Feasibility process and target enrollment set
  - Site initiation visit
  - Successful enrollment of at least 1 study subject
  - For industry sponsored studies (with sponsor agreement)

University Hospitals (cont'd)

- Study visit fee – hourly rate
- Successful Closed Trial Fee
  - Site close out visit
  - All funds from sponsor collected
  - Study related expenses charged
  - No open data inquiries from sponsor
  - No serious data breaches
  - At least 75% enrollment based on original target goal
  - No unresolved research compliance issues
  - Study terminated with IRB (unless sponsor requests study remain open for publication)

University Hospitals (cont'd)

2. Medical Directorships

- Signed by both parties
- Specifies:
  - Services to be performed
  - Time frame for arrangement
  - Compensation
- Financial terms must:
  - Be set in advance
  - Be FMV and commercially reasonable
  - Not take into account volume or value of referrals
- Require contemporaneous time sheets

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- No agreements with “ineligible persons”
- Must be approved by Legal Department and applicable business leader
- Compliance review often requested by Legal if compensation seems high or other concerns
- Legal/Compliance/Internal Audit review on regular, periodic basis and upon management request and when concerns are present
- Issues with:
  - Time sheets always the same
  - Insufficient review of time sheets
  - Need for medical director no longer exists or need lesser amount of service
  - Charging for unnecessary services

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3. Reimbursement Challenges

- Disadvantageous shifts in payers
- Rates higher for faculty physicians than community
- Large self-funded employers (e.g., Walmart, Boeing) putting pressure on managed care payers
- Increases in denials
- More aggressive behavior by commercial payers
  - Aetna case against Northern California Surgical Centers: $37 million verdict
  - United Healthcare case against Renal Associates (motion to dismiss granted May, 2017)

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- Many different payer rules; rules inconsistent among payers; rules constantly changing
- Providers must ensure accurate billing and documentary support for treatment
- Providers should keep all communications with payers
- Actions again payers for improper denials and underpayments
  - Humble Surgical Hospital, LLC case awarded >$13 million to cover underpaid claims and ERISA penalties (reversed on appeal, appellate court found while contract interpretation by payer legally incorrect, no abuse of discretion by payer).

Questions?

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