Medical and Clinical Service Contracts: A Compliance Focus

by Denisha Lich, MS, RHIA, LHRM

Contract reviews are an increasingly important function for corporate compliance officers. Regulations about gainsharing, professional courtesy, and Stark issues have resulted in the need for corporate compliance officers to team up with their organization's legal services to ensure that the language within contracts is compliant with the various regulations. The compliance officer has proven to be a valuable member of this team by providing knowledge in areas where legal counsel may not have the same expertise. These areas include reimbursement, Medicare regulations, Medicaid regulations, and the OIG Workplan areas of focus. This article looks at some examples of contract issues that may pose compliance risks, as well as examples of suggested contract language for promoting compliance.

Reviewing a contract for renewal of the provision of medical coverage between a facility and a physician's group is critical because the contract could contain old language, for example: "Professional courtesy may be designated for any patient by the physicians' group. When professional courtesy is designated, the physicians' group agrees to accept third-party reimbursement, regardless of payer, as payment in full for services rendered. No deductibles, coinsurance, or cash payment of any kind shall be billed on behalf of the physicians' group." Medicare regulations as well as several commercial and managed care guidelines prohibit professional courtesy as described above. More appropriate language would be "Provider may only extend professional courtesy to the extent not prohibited by applicable law or third-party payer agreements." It is imperative that the compliance officer work with legal services to revise the language for compliance and follow-up, especially in instances where the facility is billing for the services rendered.

Suggested Contract Language for Compliance-related issues

When reviewing medical director, physician group, and clinical service contracts, the specificity of hours of coverage required, qualifications of the professionals, and the financial and billing arrangements between parties involved are just a few examples of important areas to note from a compliance perspective. Without review, the sections within the contract that address "compensation and working facilities" can cause tremendous problems. Compensation for physician professional services and the provision of working facilities should be calculated at fair market value and should in no way infer a relationship to referral practices between both parties. Further, it is recommended that language within the contract contain requirements of adherence to your organization's policies, rules and regulations, employment laws, and code of conduct. Depending on the type of contract, many compliance officers also require evidence of a compliance program. Some suggested language for contracts follows:

Qualifications

Provider shall: (i) hold a currently valid and unlimited license to practice medicine in the State of [state name], (ii) maintain board certification in [state name], (iii) have and maintain in good standing membership in the Medical Staff of [hospital name], with appropriate privileges, all in accordance with applicable policies and procedures, and (iv) participate in appropriate continuing education.

Adherence to System's Policies, Rules, and Regulations:

Provider shall comply with and assist in developing System's and Service Area's policies, rules, regulations, and governance documents, whether now in force or hereafter adopted or amended.

Conduct: Provider shall adhere to the rules of medical ethics, all applicable Federal, state, and local laws, rules, and regulations, including, without limitation, the requirements of licensing or certifying organizations, and all laws, rules, and

regulations relating to reimbursement of the Services by Medicare and other third-party payers. Provider shall conduct himself/herself in a professional and cooperative manner in all matters concerning the Services.

Compensation: In consideration for the Services, System shall pay Provider compensation of $_____ per hour on a monthly basis. Provider shall invoice System on or about the 1st of each month for the hours worked during the preceding month. System shall pay such invoice by the 15th of the month or 14 days after receipt of the invoice, whichever is later. Provider agrees that payment hereunder is contingent on the sufficiency of written documentation of hours worked, which is subject to audit by System.

Fees and Billing

All nonprofessional fees, remuneration, and other revenues (including technical and non-technical fees, and Medicare Part A fees) attributable or related to the Services or the Service Area shall belong to System. This includes any remuneration received by Provider in the form of cash, property, or the value of any benefits or services provided by any vendor as a result of the Services. Provider shall cause such remuneration received to be promptly delivered to System.

All fees, remuneration, and other revenues (including professional fees and Medicare Part B fees) attributable or related to Provider's independent medical practice (the "Provider Medical Practice"), if any, shall belong to Provider. Provider shall be solely responsible for the Provider Medical Practice, including, without limitation, the coding, billing, and collection of fees. Provider shall not use System personnel or resources for the Provider Medical Practice.

Each statement or receipt of payment rendered by either party shall clearly identify the services billed as those of the billing party and shall reflect that it does not include the services of the other party.

System and Provider agree to cooperate in furnishing information and performing acts which may, from time to time, be necessary or desirable in order to maintain separate billings.

Ownership and Retention of Files, Documents, and Medical Records

Upon written request of the Secretary of Health and Human Services, the Comptroller General, or their duly authorized representatives, Provider shall make available this Agreement, and the books, documents, and records (collectively, the "Records") of Provider that are necessary to certify the nature and extent of costs incurred by System. The Records shall be available until the expiration of four years after the furnishing of services under this Agreement. Each Provider shall have a similar provision in all subcontracts, if any, for providing services under this Agreement.

Avoidance of Violations; Modification

Notwithstanding any provision of this Agreement, the parties shall not violate any applicable laws, rules, or regulations, including those relating to Medicare, Medicaid, similar [state name] programs, or the provision of health care or medical services. The parties shall modify this Agreement to the extent necessary to comply with such laws, rules, and regulations.

Fair Market Value Remuneration; Anti-kickback

Any remuneration exchanged between the parties shall at all times be commercially reasonable and represent fair market value for rendered services or purchased items. Notwithstanding any provision of this Agreement, no remuneration exchanged between the parties shall be determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals or any other business generated between the parties.

Referrals

Nothing contained herein requires the referral of any patient between the parties. Each party retains the right, in its sole discretion, to refer patients to any person or entity deemed appropriate for their care and treatment.

Familiarity with key issues and language for promoting compliance can only be an asset for HIM professionals.

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