AWPHD & WSHA
13th Annual CEO Leadership Retreat

Employed Physician Compensation: Navigating the Landmines
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Cle Elum, Washington
Objectives

Overview of federal fraud and abuse laws

Review recent case law

Evaluate employed physician compensation methodologies
The Stark Prohibition

- If a physician (or a physician’s family member) has a financial relationship with an entity, the physician may not refer Medicare patients to the entity for designated health services unless an exception applies.

- Stark also prohibits an entity from billing for services provided as a result of a prohibited referral.
Stark Employment Exception

Compensation elements:

The payment must be consistent with \textit{fair market value} and commercially reasonable even if no referrals are made.

The payment \textbf{must not be tied to referrals}.

Any productivity bonus must be based on services \textit{personally performed}.
Penalties

Payment denial

Refund to the individual

Civil monetary penalties of up to $15,000 per prohibited service

Civil assessment of up to 3x amount claimed

Program exclusion
Analytical Approach

Is there a direct or indirect financial relationship between the referring physician and hospital? If yes, Does the physician refer Medicare patients to the hospital for DHS? If yes, Does the arrangement comply with an exception? If no, any bill submitted for a DHS resulting from a prohibited referral violates the statute.
Anti-kickback Statute

All federal health care programs
All providers and entities
Criminal statute
The Prohibition

Prohibits purposeful payments to induce or reward referrals paid by any federal health care program

Criminal statute requires intent

“One purpose” test

AKS violations are now explicitly false claims under the FCA
Penalties

Criminal fines and imprisonment up to five years

Civil money penalties of $50,000 plus treble damages

Exclusion from federal health care programs

Violation of the False Claims Act
Safe Harbors

If the conduct in question complies with a safe harbor, no liability under the statute.

Unlike the Stark exceptions, compliance with a safe harbor is not mandatory.
The False Claims Act makes it illegal to submit false or fraudulent claims for payment to the federal government.
False Claims Act, continued

Essential Elements to FCA:

1. a person or entity must “knowingly”
2. submit or cause to be submitted a “claim” for payment to the U.S. Government
3. that is false or fraudulent
False Claims Act, continued

Returning Overpayments

FCA now requires prompt refund of overpayments

- Explicitly defines “overpayment”
- Must report and return overpayment within 60 days
- Retaining an overpayment is defined as an “obligation” under the FCA and failure to discharge an obligation violates the FCA
Penalties

CMPs of $5,500 to $11,000 per false claim

Treble damages
Qui Tam/Whistleblower

Relator files FCA suit under seal on behalf of government

Government has 60 days to intervene

Relators receive between 15-30% of total award

Most FCA cases start out with Whistleblowers
Civil Monetary Penalties – Be Aware

Prohibits knowing payment to a physician to reduce or limit services to Medicare and Medicaid beneficiaries
Case Law Update

- Refresher on Tuomey
- 2005 Qui Tam case
- Contracts with 19 specialists
- All OP procedures to be done at Tuomey
- Relator, Dr. Drakeford, declined the deal
Tuomey continued

Two juries have found Stark and FCA violations

21,730 false claims

$39 million in improper payments

$228 million in penalties and fines
Halifax Hospital Overview

- District Hospital
- Qui tam action brought in 2009
- Stark and FCA violations
- Nov 2013 US District Court granted summary judgment for govt on Stark claims for medical oncologists
Halifax Employed Oncologists

- Failed to meet Stark employment exception
- Medical oncologists – bonuses tied to prescription drugs
- Neurosurgeons – compensation exceeded FMV
Halifax Pays $85 Million

• About 25,000 oncology claims and 50,000 neuro claims
• $85 million settlement is about 4x damages
• 5 year CIA
• Relator paid $20.8 million
Stark Employment Exception

Compensation elements:

The payment must be consistent with fair market value and commercially reasonable even if no referrals are made.

The payment must not be tied to referrals.

Any productivity must not be tied to referrals.

Any productivity bonus must be based on services personally performed.
Compensation Models

Moving from volume

To value
PCP Metrics

- Mid-level supervision
- Patient access
- Panel size
- Care coordination
- Medical home
- Chronic disease management (diabetes, high blood pressure)
- Preventive measures – screenings and vaccinations
Specialist Metrics

Timely consults
Care coordination
Clinical co-management services
Readmissions
On-time surgical starts
Citizenship Metrics

Medical records/documentation
Use of EMR
Meeting attendance
Behavior standards
Mentoring/training
Old Model - Volume

Base compensation (75%)

Production compensation (25%)
Old Model Calculation

FMV compensation of $500,000 for a general surgeon with wRVU production at the median level (4,000 wRVU).

wRVU floor of $3,000 and conversion factor $125

Base salary = $375,000

Production compensation = 1,000 wRVU x 125 = 125,000

Total compensation = $500,000
New Model

Base compensation (50%)
Production compensation (25%)
Quality compensation (25%)
# Quality Compensation - Elements

<table>
<thead>
<tr>
<th>Incentive</th>
<th>Performance Measure</th>
<th>Benchmarks</th>
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<tbody>
<tr>
<td><strong>A</strong></td>
<td>25% Mid-level integration and supervision</td>
<td>Increase use of mid-level providers to conduct certain services like patient history and following and tracking chronic conditions</td>
</tr>
<tr>
<td><strong>B</strong></td>
<td>25% Patient satisfaction</td>
<td>Score of X or higher on Press Ganey</td>
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<tr>
<td><strong>C</strong></td>
<td>25% Panel size</td>
<td>Increase panel size by X%</td>
</tr>
<tr>
<td><strong>D</strong></td>
<td>12.5% Preventive measures</td>
<td>Increase vaccinations for school age kids by X%</td>
</tr>
<tr>
<td><strong>E</strong></td>
<td>12.5% Improved access</td>
<td>Reduce wait times for appointment by X days</td>
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Actual Compensation

Surgeon produces 4,000 wRVUs and meets performance measures A, B and D

Base salary = $250,000
Production compensation = $125,000
Quality incentive = $75,125
Total compensation = $453,125
Key Reminders

Total compensation must be FMV
Commercially reasonable
Not tied to referrals
Production pay is limited to personally performed services
Don’t financially incent physicians to reduce or limit services
to Medicare and Medicaid patients
QUESTIONS???