Physician-Hospital Integration
Compliance Considerations

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Agenda

1. Current Environment
2. Integration Overview
3. Top Compliance Considerations
4. Board and Senior Leadership Duties and Expectations
5. Discussion and Questions
Why Integration: The Current Environment

- Encouraged to integrate, but little guidance on how
  - Health care reform law
  - Economic pressures
  - Reimbursement cuts
  - Workforce shortages
  - Physicians and “work-life” balance
  - Demographic changes
  - Quality initiatives
  - Pay-for-Performance
  - Political attention
  - Push for accountability

Integration Overview

- Historical perspective
- Accountable Care Organizations
- CMS involvement and incentives
- Various models
  - Co-management service agreements
  - ACO-like arrangements
  - Hospital employment of physicians
  - Physician-hospital organizations
  - Large multi-specialty group practice that affiliates/partners with hospitals
  - Integrated physician practice networks

Integrate: Now What?

- Define objectives
- Discuss and set expectations
- Roadmap for roadblocks
- Involve key stakeholders (including Compliance) at onset
- Develop relationships
- Due diligence
  - People
  - Behavior
  - Practices
- Ongoing process

Consideration 1: Culture Changes

- What is the organization’s culture?
- What is the physician or physician group’s culture?
- Review and understand physician behavior patterns
  - Historical practices
  - Training and education
  - What changes going forward?
  - How does the hospital implement changes to deep-rooted practices?
- Evaluate possible employee issues
  - Who drives?
  - Responsibilities?
- Compliance plans and policies
  - How integrate if both parties have
  - Assess discrepancies in expectations and practices
Consideration 2: Conflicts of Interest

- Perceived and actual
- Disclosure procedures
- Drug and device relationships
  - Current practices
    - Expectations going forward
- Growth strategies and potential conflicts of interest
- Review and analyze before integration and routinely thereafter

Consideration 3: Documentation, Coding and Billing

- Due diligence before integration and routinely thereafter
- Commitment to high standards
  - Timeliness
  - Accuracy
  - Completeness
  - Medical Necessity
  - Proper claims and payments
- Necessary training
- Roadmap for auditing and monitoring
- Plan for corrective action plans
- Consider the players and past “learned” behavior
- Clearly define expectations
Consideration 4: Anti-Kickback Statute

- Overview
  - Cannot give, offer, ask for, or receive something of value in return for referrals
  - Can have criminal liability if even one purpose is to encourage or reward referrals, regardless of other good reasons
  - Don’t exchange money, gifts, services, etc. for referrals
  - Be careful in dealings with referral sources or people to whom the hospital refers patients
  - Do not tie compensation to volume or value of referrals
  - Be careful about metrics or incentives that could be misconstrued
  - Need for Independent fair market-value analysis of incentives
  - Consider personal services and management contract safe harbor
  - If physician employees, are they “bona fide employees” defined by IRS?
  - If physician practice acquisition, consider potentially relevant challenges such as provider-based designation requirements

Consideration 5: Stark Laws

- Overview
  - A physician may not refer Medicare patient for certain DHS where the physician has a financial relationships with the entity to which the patient is refereed unless all components of an applicable exception are met
  - Consider how to structure incentives
  - Consider some of the following exceptions:
    - Fair market value exception
    - Personal service arrangement exception
    - Isolated transaction exception
    - Employment exception
    - “Group Practice” considerations and additional flexibility
  - State Laws
Consideration 6: False Claims Act

- Overview:
  - Submitting false claims can have severe consequences
  - Cannot knowingly present or cause to be presented a false or fraudulent claim to a government payor
  - Cannot knowingly use a false record or statement to keep reimbursement
  - Failure to report and return overpayments timely can result in legal liability
  - Ensure that documentation and claims are accurate
  - Does the bill match what happened?
  - Education and training
  - Auditing and monitoring
  - What practices and behaviors will the hospital inherit?
  - Stark and Anti-Kickback as they relate to FCA

Consideration 7: Anti-trust Laws

- Integration strategies and agreements might draw attention of antitrust enforcement agencies (DOJ and FTC)
- Even if not reportable, agreement might be scrutinized
- Market power questions
  - Review of direct and circumstantial evidence
  - Consider pro-competitive efficiencies
- Are you sharing sensitive information like price and salary information?
  - Interdependent pricing decisions
  - Alleged conspiracy to fix prices
Consideration 8: Tax Laws

- Is compensation paid by a tax-exempt organization reasonable
  - Independent evaluation
- Fair market value
- Arms length transaction
- Private inurement, excess benefit considerations

Consideration 9: Compliance Education and Training

- Compliance education at time of integration
- Routine compliance education
- Privacy and Security education
- Job-specific training
- Continuous improvement
- Consider past behaviors and practices
- Physician champions
- Collaboration

Compliance
Consideration 10: Vendor Relationships

- Change in culture and expectations
- Review hospital policies in light of physician practices
- Drug rep visits and free/discounted items from vendors
- Other vendor discounts
- Define expectations and purchasing decision processes

Board and Senior Leadership Duties

- Understand the integration strategy, operations and risks
- Be aware of and address major risks
- Oversee activities
- Proper and prompt responses to potential non-compliance
How to Meet Expectations

- Ask questions (e.g., structural and operational ones)
- Follow up; seek prompt resolution
- Adequate resources and empowerment
- Ongoing risk assessments
- Education and training
- Ongoing process to define integration strategies

Discussion and Questions

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