Pay for Performance: Compliance Challenges

Andrew J. Demetriou
Fulbright & Jaworski L.L.P.
Los Angeles, California

The Road To P4P

- Cost Control Strategies
  - 1980s style “Managed Care”
  - 1990s “Alignment of Incentives”
  - Gainsharing
The Road To P4P

- The Advent of Quality Markers
  - NCQA and HEDIS
  - Agency for Health Care Policy and Research
  - Institute of Medicine

The Road To P4P

- Cost Control Strategies with QA Elements
  - Integrated Delivery Systems
  - Broad Gauge Corporate Databases
  - Risk Pools
  - Targeted Rewards
The Road To P4P

- IOM and “To Err is Human” and “Crossing the Quality Chasm”
  - Focused attention on medical errors
  - Suggested changes in process
- STEEEP
  - Safety, Timeliness, Effectiveness, Efficiency, Equity and Patient-Centric

Introduction to P4P

- Borrowed from Manufacturing
  - Zero Defects
  - Continuous Quality Improvement Total Quality Management
  - “Six Sigma”
  - ISO 9000
Introduction to P4P

- **Key Elements**
  - Discipline in process
  - Incorporation of proven best practices
  - Do what works—link process to outcomes
  - Measure the outcomes
  - Incentives for attaining goals

---

**Key Issues**

- Defining Quality—HEDIS, IOM, AMA
- Making Standards Consistent
- Whose Ruler Do We Use?
- How do I win?
- Accountability
Private Efforts

- Bridges to Excellence
- The Leaffrog Group
- Integrated Healthcare Association
- JCAHO
- Independent Health Plans

Governmental Efforts

- Medicare
  - BIPA Quality Reporting Incentive
  - 96% compliance in 2006
  - Physician Incentive Payments (HR 6111)
Governmental Efforts

- Demonstration Projects
- Gainsharing Legislation
- P4P Legislation
- Will States Take Initiatives?

Is P4P Legislation DOA?

Rep. Pete Stark (D-Calif.) called pay-for-performance initiatives “offensive” and said that Medicare should **boot hospitals and physicians** from the program if they don’t meet the **highest** standards of care, **rather than reward them** when they do.

Modern Healthcare Daily Dose, December 4, 2006
P4P Compliance Issues/Gainsharing

- Historical Background
- The Government strikes back
  - Enactment of Civil Monetary Penalties Act--1986
  - 1998 Fraud Bulletin
  - Efforts at a Standstill

P4P Compliance Issues/Gainsharing

- Gainsharing Demonstration Project
  - 8 hospitals in New Jersey
  - Litigation from Excluded Hospitals
  - Injunction
P4P Compliance Issues/Gainsharing

- Favorable Advisory Opinions
  - 05-01, 05-03, 05-05, 05-06 Cardiac Surgery
  - 05-02, 05-04 Cardiac Catheterization
  - 06-22 Cardiac Surgery

P4P Compliance Issues/Gainsharing

- Key Elements
  - Specific Cost Savings—Tied to MD Behavior
  - Caps on Amounts Shared
  - Quality Markers
  - Assurance that care will not be limited
- Is the strategy viable over the longer term?
- How to assure compliance?
P4P Compliance Issues/Quality Reporting

- Studies have indicated that level of knowledge of quality issues by Board Chair is very low and inconsistent with CEO’s expectations
- Need to educate Governing Boards on quality obligations and existing reporting processes
- Impact on Compliance Programs

P4P Compliance Issues/False Claims

- New reporting obligations to Government and Private Plans magnify the risk of errors and potential for False Claims
- U.S. v. Martha Bell and Atrium I (W.D. Pa. 2005)—False Records of Care
P4P Compliance Issues/Medical Staff

- Impact of participation in P4P and Gainsharing arrangements on Medical Staff privileges and rights
- Conflicting QA Standards
- The Non-Compliant Physician

The Challenges of P4P

- Will providers make the necessary investments and cultural changes?
- Will health plans and the government put enough on the table to make a difference?
- Will government policy remain consistent over the long term?
- Will compliance problems frustrate P4P initiatives?