Auditing Financial Relationships Between Physicians, Hospitals and Providers

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Discussion Topics

- Introductions
- Brief overview of federal laws and regulations impacting financial relationships
- Importance of auditing and monitoring of financial relationships as part of compliance program
- Developing the audit approach, scope and objectives
  - Audit approach and risk areas
- Reporting results and developing corrective actions
  - Coordination with legal counsel
  - Use of attorney/client privilege
Trinity Health

Mission
We serve together in Trinity Health, in the Spirit of the Gospel, to heal body, mind and spirit, to improve the health of our communities and to steward the resources entrusted to us.

- Fourth Largest Catholic Health System in the U.S.
- 46 Hospitals (31 Owned and 15 Managed) Across the Nation
- Operated through 21 Ministry Organizations
- 7,346 Active Staff Physicians
- 45,100 Full-Time Equivalent Employees
- Revenue of $6.1 Billion
- $307 Million in Community Benefit Ministry (Excluding Unpaid Cost of Medicare)
What This Session is **Not** Intended to Do…

- The laws and regulations in this area are **extremely complex**
- This session is **not** intended to make you a **legal expert** on the federal laws that apply to financial relationships
- The session will focus on organization policies, internal controls and auditing and monitoring strategies with case studies to illustrate their application
- You should always consult with knowledgeable and experienced legal counsel on any questions you may have involving relationships with physicians or other referral sources
Brief Overview of Federal Laws and Regulations
Anti-Kickback Statute

- **Working Definition**
  - It is illegal to knowingly and willfully offer, solicit, pay, or receive “remuneration”, directly or indirectly, in cash or in-kind, in exchange for referring patients to a health care provider for which payment is made by a federal or state health care program.

- **Key Concepts**
  - Intent required, but be warned of “willful blindness, reckless disregard and/or deliberate ignorance”
  - Broad definition of “remuneration”
  - Penalties apply to both parties in a transaction
  - Beware “One Purpose Rule”
  - Safe Harbors
Anti-Kickback Statute

- **Anti-Kickback Statute Violations**
  - Violation of the Anti-Kickback Statute is a serious crime - a felony!
  - Individuals can be punished by:
    - Repayment of Medicare and Medicaid payments (restitution) plus fines of up to $250,000 and
    - Imprisonment for up to 5 years
  - Penalties against the organization can include:
    - Up to $500,000 in fines
    - Civil monetary penalties of up to $50,000 for each violation
    - False claims penalties equal to 3x damages plus up to $11,000 per claim that can quickly add up to $ millions
    - Potential exclusion from participation in Medicare, Medicaid and other federal health care programs
    - Costly and onerous Corporate Integrity Agreements as a condition of continued participation in government health care programs
The Stark Law (42 U.S.C. § 1395)

- Also known as the Physician Self-Referral Law
- Working Definition:
  Under the Stark Law, unless an “exception” applies, a physician is prohibited from making a referral to an entity for the furnishing of a “designated health service” for which payment may be made under Medicare or Medicaid, if the physician (or an immediate family member) has a financial relationship with the entity.

- Key Concepts
  - Designated health service – very broad, includes IP and OP services
  - Civil, not criminal law
  - Knowledge and/or intent to violate law not necessary
  - Exceptions vs. Safe Harbors

Financial Relationship

Referrals
The Stark Law

- Stark Law Violations
  - Unless a Stark exception applies, the hospital is prohibited from billing Medicare and Medicaid for services related to the “tainted” relationship
  - If Medicare and Medicaid payments have already been received, the hospital may be required to refund amounts received
  - Violations of the Stark Law can result in the following additional penalties:
    - False Claims penalties up to 3x’s the amount claimed
    - Civil monetary penalties up to $15,000 per item or service
    - Civil monetary penalties up to $100,000 for arrangements designed to circumvent the Stark Law
    - Potential exclusion of the hospital from the Medicare and Medicaid programs
    - Fines and penalties can be assessed in addition to Anti-Kickback Statute fines and penalties
The Stark Law – Quick Illustration of Penalties

• Example Scenario
  – Dr. J is on the medical staff of ABC Hospital.
  – Dr. J serves as part-time medical director for ABC Hospital’s oncology program.
  – During 2004 and 2005, Dr. J was paid $50,000 annually ($100,000 in total) for his medical director services.
  – Dr. J admitted 267 Medicare and Medicaid patients to ABC Hospital during 2004 and 2005.
  – Total hospital charges for these patients approximated $3.4 million in 2004 and 2005. ABC Hospital received $1.6 million in payments from Medicare and Medicaid for these patients.
  – In 2006, ABC Hospital discovered it did not have a contract for Dr. J’s services.

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<tr>
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<th>Medicare and Medicaid Charges</th>
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<td>$3.4 million</td>
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<tr>
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<th>Treble damages</th>
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<table>
<thead>
<tr>
<th></th>
<th>Subtotal</th>
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<td>$10.2 million</td>
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<tr>
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<th>$15,000 per service (267 patients)</th>
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<td>$4.0 million</td>
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<thead>
<tr>
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<th>Total Liability</th>
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<td>$14.2 million</td>
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Intermediate Sanctions

- Intermediate Sanctions apply to tax-exempt organizations (TEOs)
- The Internal Revenue Service (IRS) is responsible for overseeing TEOs compliance with the Intermediate Sanctions regulations
- Intermediate Sanctions were created by Congress to provide the IRS additional financial penalties to apply to organizations found to be in violation of tax-exempt rules, without seeking revocation of tax-exempt status
Intermediate Sanctions

• Intermediate Sanctions Violations
  – If a TEO engages in an excess benefit transaction with a disqualified person, the disqualified person could be subject to a tax of 25% on the excess benefit.
  – If the excess benefit is not timely paid back to the TEO, the disqualified person can be subject to a 200% tax on the excess benefit.
  – Directors, officers and managers of the TEO can also be assessed individual penalties of up to 10% of the excess benefit amount, up to $20,000 per transaction.

• Key Concepts
  – Excess benefit
  – Disqualified persons – substantial influence
  – IRS views on physicians as Disqualified Persons
Importance of Auditing and Monitoring Physician Financial Relationships
Importance of Auditing and Monitoring Physician Financial Relationships

This can never happen to **ME**, right?

The government has better things to worry about than a contract between my hospital and a physician, right?
Importance of Auditing and Monitoring Physician Financial Relationships

- Federal enforcement of these laws and regulations is increasing
- Recent Stark and Anti-Kickback Settlements
  - Metropolitan Hospital, Grand Rapids MI (12/03) — $6.5 million
  - Erlanger Medical Center, Chattanooga TN (10/05) — $40 million
  - Alvarado Medical Center, San Diego CA (4/06) — $21 million
  - Marion Regional Health Care System, Marion GA (7/06) — $3.75 million
  - Medtronic, Minneapolis MN (7/06) — $40 million
  - University Hospitals and Health System, Cleveland OH (8/06) — $14 million
  - Medical device manufacturers (9/07) — $311 million
  - HealthSouth and 2 physicians (12/07) — $14.9 million
Importance of Auditing and Monitoring Physician Financial Relationships

- CMS recently announced plans to require hospitals to report their financial relationships with physicians
  - Revised version published September 14, 2007
  - Currently awaiting final OMB clearance
- CMS intent to use DFFR to assess compliance with Stark Law
- 500 hospitals expected to receive the DFFR in early 2008
- Reporting is mandatory with 60 day time period for returning completed DFFR
  - Penalties up to $10,000 for failure to timely submit
- DFFR includes 8 detailed worksheets to disclose financial relationships with physicians
- Certification statement must be signed by CEO, CFO or comparable officer
Importance of Auditing and Monitoring Physician Financial Relationships

• Certification Statement in DFRR

**Certification Statement**

I hereby certify that the attached responses to this Section 1877(f) Disclosure of Financial Relationships Report, filed on behalf of (insert Medicare Provider name) ______________________ (insert Medicare Provider Number) ______________________ are true and correct to the best of my knowledge and belief.

________________________________________
Signature

________________________________________
Printed name

________________________________________
Date

________________________________________
Title *

* The certification must be signed by the Chief Executive Officer (CEO), Chief Financial Officer (CFO), or comparable officer of the hospital.
Internal Controls Over Financial Relationships with Physicians
Internal Controls Over Financial Relationships

• Common Misconception:

“All our physician contracts are developed or reviewed by qualified health care legal counsel. We don’t have any compliance risks with physician financial relationships”

• Reality:
  – Scope of legal review
  – Significant compliance risks beyond the legal documents
  – Risks resulting from the administration/monitoring of physician arrangements
Internal Controls Over Financial Relationships

- Anti-kickback, Stark and Intermediate Sanctions - laws and regulations differ, but are similar in several key areas
- With enforcement increasing, internal controls over financial relationships with physicians and other referral sources should be established
- Key Control Areas
  - Physician contract administration
  - Controls over payments to physicians
  - Fair market value of compensation, other financial terms
  - Legal review
  - Review and approvals
Internal Controls Over Financial Relationships

- Trinity Health has established system-wide policies that require the following 5 steps be completed for each relationship
- See policies provided in materials
- Process is key!

- Has your organization established written policies for physician financial relationships? What do they require?
Auditing Financial Relationships with Physicians
Developing Audit Objectives, Scope and Approach

• Who Performs Audits?
  – Internal audit
  – Compliance officer/staff
  – Legal counsel
  – Contracted resources

• Coordination with Legal Counsel
  – Strongly recommend involvement of legal counsel in any audits involving physician financial relationships
  – Recommend audits be conducted under direction of legal counsel
    • Engagement letter issued by legal counsel
    • Planning meetings to discuss approach and scope
    • Final report issued to legal counsel
    • Legal counsel development of corrective actions with management
  – Will discuss further
Trinity Health Approach

- **Audit Objectives**
  - Assess compliance with Trinity Health policies for financial relationships with physicians designed to ensure compliance with federal laws and regulations

- **Audit Scope**
  - Population of financial arrangements in effect at time of audit

- **Audit Approach**
  - Interviews, walkthroughs to assess policies and procedures
  - Sampling of financial arrangements by type for additional testing to assess compliance with system policies
  - Use of computer-assisted audit procedures
Audit Approach – Where to Start?

• Physician Contract Population
  – Identify payments to physicians or physician owned entities
  – Identify types of physician financial arrangements in effect - obtain reports/listings of physician contracts by type
  – Use for sample selection based on types of arrangements and assessed risks
  – Example:

<table>
<thead>
<tr>
<th>Type of Agreement</th>
<th># Sampled</th>
<th>Population Total</th>
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<tbody>
<tr>
<td>Medical directorship agreements</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Employment agreements</td>
<td>7</td>
<td>49</td>
</tr>
<tr>
<td>Recruitment agreements</td>
<td>5</td>
<td>9</td>
</tr>
<tr>
<td>Leases</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Professional service and other agreements</td>
<td>5</td>
<td>21</td>
</tr>
<tr>
<td>Property sales/purchases</td>
<td>3</td>
<td>9</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>30</strong></td>
<td><strong>117</strong></td>
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</table>
Audit Approach – Where to Start?

- Physician Contract Administration – What to Look For:
  - Contract management system, filing, policies and procedures
  - Identify responsibilities, interview key support personnel, perform walkthroughs
    - Central contract database, repository or similar system?
    - Master list of contracts – all agreements/contractual arrangements between physicians and physician family members are listed or cross-referenced in agreements?
    - Ability to timely provide a complete, accurate listing of all physician contracts?
    - Frequently missed deadlines for renewals, inability to locate contracts, multiple versions of contracts?
    - Number of individuals involved in contract negotiation, authoring/development, review and approval?
Audit Approach – Where to Start?

• Physician Contract Files – What to Look For:
  – Review example physician contract master file(s) for each type of transaction
  – Understand any organization policies/procedures for content of physician contract files
  – What to Look For:
    • Final executed copy (both parties) of contract?
    • Basis for determining FMV of financial terms, including supporting documentation?
    • Evidence of legal counsel review/approval?
    • Business purpose/need for the physician relationship clearly established?
    • Approvals – management, Board, etc.? 
Audit Approach and Risk Areas

• Financial Arrangements in Writing
  – Key requirement of Stark and Anti-Kickback laws
  – Objectives
    • All payments to physicians are supported by a written contract/agreement
    • Compensation is appropriately reported for tax purposes
  – Summary Procedures
    • Obtain most recent W-2, 1099 and file/listing of current active medical staff
    • Identify physicians through cross-matching of records to listings/reports of physician contracts/financial arrangements
      – Use of computer-assisted audit programs (e.g. ACL)
    • Follow-up on any discrepancies with management and legal counsel
Audit Approach and Risk Areas

• Financial Arrangements in Writing - What to Look For:
  – Compensation reported on 1099/W-2 not included listing of contracts/agreements and vice versa
  – Compensation reported on 1099/W-2 substantially different than listing of written contracts/agreements
  – Compensation paid with expired contracts
  – Issues with proper tax-reporting of compensation
  – Differing worker classification treatment of similar physicians/responsibilities
  – Multiple agreements with same physician
Audit Approach and Risk Areas

- Financial Arrangements in Writing
  - Important to assess policies/controls in AP for payments to physicians
  - What to Look For:
    - Does accounts payable have current listing of physician contracts/agreements?
    - Are controls established to prevent payments from being processed that are not on listing of contracts/agreements?
    - Are there policies and procedures for suspension of payments without current contracts/agreements?
    - Does the organization confirm payment terms with business owners on at least an annual basis
    - Beware “auto-pays”
Audit Approach and Risk Areas

- Fair Market Value (FMV)
  - Requirement of Anti-Kickback, Stark and Intermediate Sanctions
  - All transactions with physicians must be set at FMV
  - Assess organizational policies and procedures for establishing FMV for each type of physician financial arrangement
    - Compensation (employment and independent contractor)
    - Leases
    - Asset sales and purchases
    - Service agreements

Objective, independent sources should be used to support FMV of financial terms with physicians
Audit Approach and Risk Areas

• Compensation Agreements – What to Look For:
  – Use of external compensation survey data for appropriate specialty (e.g. MGMA, Sullivan & Cotter, Hay, etc.)?
  – Clear basis for compensation significantly varying from external compensation data?
    • Documented recruiting difficulties
    • Significant variation in roles and responsibilities
    • Years of experience
    • Specialty certifications/training
    • Differences in regional or local compensation
  – Incentive/bonus compensation formulas?
    • Compensation caps
    • Personally performed services
    • Total compensation and FMV
Audit Approach and Risk Areas

- Compensation Agreements – What to Look For:
  - Independent Contractors
    - Job performance requirements
    - How reported/monitored
      - Time reporting
      - Meeting attendance
      - Program outcome measures
  - Overlapping duties among multiple agreements
  - Worker Classification
    - Employee vs. Independent Contractor
Audit Approach and Risk Areas

- Trinity Health Approach
  - Physician compensation data from national surveys compiled and provided on Trinity Health Intranet site
  - All MOs required to reference data in FMV assessments
  - Worksheets, templates provided to assist in documenting FMV
Audit Approach and Risk Areas

• Recruitment Agreements – What to Look For:
  – FMV of Recruitment Incentives
    • Relocation assistance
    • Expense reimbursements
    • Private practice income or revenue guarantees
    • Loans, third-party loan guarantees
    • Insurance, indemnity and malpractice assistance
  – Documentation of Community Need
    • Recent graduate of a residency or fellowship program
    • Not previously practiced in or affiliated with hospitals and community
    • Evidence of community need - HPSA or third-party physician needs assessment
Audit Approach and Risk Areas

• Recruitment Agreements – What to Look For:
  – Administration of income guarantees
  – Payment of direct vs. indirect expenses
  – Treatment as loans
  – Tax reporting of loan forgiveness

• Leases – What to Look For:
  – FMV of lease rates - Independent, objective sources used to establish lease rates
    • Commercial real estate surveys of similar type property
  – Consistency of lease rates
  – Tenant finishing allowances
  – Adherence to lease terms – timely billing, payment, late fees and penalties
Audit Approach and Risk Areas

• Non-Monetary Compensation
  – The Stark Law strictly limits the value of gifts and benefits hospitals may provide to medical staff and their immediate family members
  – Gifts and benefits can include:
    • Meals
    • Sporting, theatre, concerts and similar entertainment
    • Travel, lodging, continuing education
    • Discounted or free services
  – Non-Monetary Compensation Exception
    • Off-campus types of activities
    • Excludes cash or cash equivalents
    • Not tied in any way to past or future referrals, business, does not violate Anti-Kickback Statute, etc.
    • Cannot be solicited by physician or physician’s practice
    • Consistent with types of benefits offered to medical staff members in the community
    • **2008 annual limit - $338**
Audit Approach and Risk Areas

• Non-Monetary Compensation – What to Look For:
  – Hospitals policies and procedures
  – Reporting/tracking of non-monetary compensation benefits by physician
  – Accounts payable, expense reporting controls
  – Education of management and staff on non-monetary compensation requirements, organization policies and procedures

• DFRR will ask CEOs/CFOs to certify compliance!

5 Were there any non-monetary compensation and/or medical staff incidental benefits granted to a physician that exceeded published limits (42 C.F.R. § 411.357 (k) & (m))?

☐ YES  ☐ NO

If YES, attach an explanation. The explanation should include the physician's name and National Provider Identifier.
Audit Approach and Risk Areas

• Other Areas
  – Miscellaneous Receivables
    • Review general ledger account balances for Other Assets/Receivables
    • Identify balances due from physicians
      – Miscellaneous A/R
      – Lease payments
      – Loans
    • Timely billing, collection, follow-up on past due balances, adherence to agreements
  – Joint Ventures with Physicians
    • Operating in accordance with JV agreement terms
    • Services provided to JV by hospital and physician partners
      – Documented service agreements
      – FMV of financial terms
Coordination with Legal Counsel

- All audits involving physician financial relationships conducted under direction of legal counsel
- Engagement letter issued by legal counsel at outset
- Communication throughout the audit as issues are identified
- All audit workpapers, documents, communications and report labeled “attorney-client privilege, attorney work-product”
- Final report issued to legal counsel
  - Report facts, findings
  - Do not make statements or reach conclusions regarding violations of law or regulations
  - Legal counsel responsible for distribution of reports to management
- Exisit meetings held by legal counsel with management and auditors
- Legal counsel develops corrective action plans with management
Summary

• Enforcement of federal laws and regulations related to financial relationships with physicians is increasing
• Penalties for violations, particularly the Stark Law, can result in multi-million $ fines and onerous corporate integrity agreement requirements
• Health care organizations should establish written policies and procedures and implement appropriate internal controls to support compliance
• Compliance programs should regularly evaluate the effectiveness of organizational policies and procedures for physician financial relationships through auditing and monitoring activities
Questions/Discussion

- Thank-You for Your Attendance and Participation!
- Follow-up questions can be directed to:

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