

ROLE OF CONTRACT MANAGEMENT IN A HEALTHCARE COMPLIANCE PROGRAM DESIGN

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Session Overview

- Overview of Compliance Regulations affecting Contract Management
- Compliance Concerns and Best Practices surrounding use of Social Media
- Effect of Contract Management
- Contract Management Best Practices
- Questions and Answers

Role of Contract Management



Due to stringent federal and state regulations surrounding healthcare, an effective compliance program that includes organization and oversight of a healthcare facility's contracts, agreements and critical documentation is a must!

Types of Agreements Affected by Compliance Regulations

- Physician Employment Agreements
- Non-Physician Employment Agreements
- Vendor Contracts
 - Affiliation Agreements
 - Equipment: Lease, Purchase and Service
 - Managed Care
 - Pharmacy Agreements
 - Real Estate Leases
 - Research and Grant Agreements

Compliance Regulations to Consider

HIPAA
HITECH
Stark I, II, III
Federal Anti-Kickback Statute
False Claims
Joint Commission (JACHO)

HIPAA

Health Insurance Portability and Accountability Act of 1996

Title II of HIPPA, Administrative Simplification (AS) provisions, requires establishment of national standards for electronic health care transactions and national identifiers for providers, health insurance plans and employers.

5 rules regarding Administrative Simplification:

- Privacy Rule
- Transaction Codes Sets Rule
- Security Rule
- Unique Identifiers Rule
- Enforcement Rule

Source: <http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html>

Privacy Rule

Regulates the use and disclosure of certain information held by “covered entities” and establishes regulations for the use and disclosure of Protected Health Information (PHI).

This includes all medical and payment information which can be linked to an individual.



Security Standards

Covered entities who out-source some of their business processes must ensure their vendors have a framework in place to comply with HIPAA requirements.



Includes administrative, physical and technical security.

An effective contract management program can assist in tracking a vendors compliance with this regulation.

HITECH Act

Health Information Technology for Economic and Clinical Health Act

The HITECH Act expanded the HIPPA Privacy and Security Rules and directly affect an organization's business associates by applying HIPPA Privacy and Security Rules to Business Associates.

Business Associates:

- Must comply with safeguards outlined in the HIPPA Privacy and Security Rules
- Must Report security breaches to covered entities
- Can be subject to civil and criminal penalties for violation of HIPPA



Source: http://www.azhha.org/member_and_media_resources/documents/HITECHAct.pdf

How can Contract Management help?

By providing control over management of Business Associate Agreements.

Implement policies and procedures for maintaining Business Associate Agreements.

Does your contract?

- Require a BAA?
- Is BAA attached?
- Does the language meet your organization's standards?
- Is it signed?
- When does BAA expire?
- If expired, is a new BAA in place?

Stark I-III

Stark I (OBRA 1989)

- Bars Self Referrals for clinical laboratory services
- Includes exceptions called “safe harbors”

Stark II (OBRA 1993)

- Expanded to a range of additional health services
- Applies to Medicare and Medicaid

Stark III (OBRA 2007)

- Finalized and responded to the Phase II interim final rule which:
 - ▣ set self-referral prohibition and applicable definitions
 - ▣ interpreted various statutory exceptions to the prohibition
 - ▣ created additional regulatory exceptions for arrangements that do not pose a risk of program or patient abuse

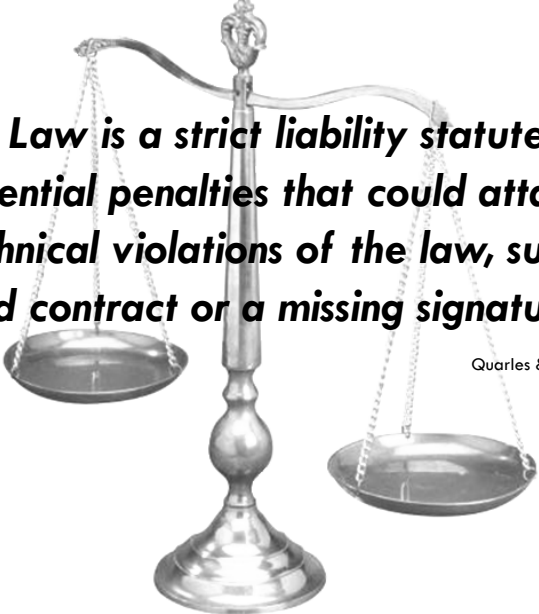
Source: www.starklaw.org and www.healthlawyers.org

Stark Law

42 U.S.C. § 1395nn

- ❖ Prohibits physicians from making referrals to an entity for the furnishing of “designated health services” (DHS) payable by Medicare, if the physician (or immediate family member) has a financial relationship with the entity.
- ❖ Prohibits any provider from submitting claims for payment to Medicare for services provided as the result of a prohibited referral.

***Contract management can help by identifying any
Conflicts of Interest a physician may have.***



“The Stark Law is a strict liability statute with huge potential penalties that could attach to even technical violations of the law, such as a lapsed contract or a missing signature.”

Quarles & Brady, LLP

Federal Anti-Kickback Law

Protects patients and the federal health care programs from fraud and abuse by curtailing the corrupting influence of money on health care decisions.



Prohibits the exchange, offer to exchange or receipt of anything of value to induce or reward referrals of items or services payable by federal healthcare programs.

Source: <http://oig.hhs.gov/fraud/docs/safeharborregulations/safefs.htm>

Safe Harbors

Immunize certain payment and business practices that are implicated by the anti-kickback statute from criminal and civil prosecution under the statute.

Safe Harbor Areas Include:

- Investment Areas
- Space Rental
- Equipment Rental
- Personal Services/Management Contracts
- Referral Services
- Payments made to *Bona Fide* Employees
- Recruitment

Contract management can help provide oversight to contracts to ensure contracting entities are following regulations surrounding anti-kickback and are aware of any safe harbors provided under the anti-kickback statute.

False Claims Act

31 U.S.C. § 3729-3733

Imposes liability on any person who:

- Submits a claim to the federal government that he/she knows (or should know) is false.
- Submits a false record to obtain payment from the government
- Obtains money from the federal government to which they may not be entitled and uses false records to retain the money

Source: <https://www.cms.gov>

Examples of False Claims

- Physician who submits a bill to Medicare for services they have not provided
- Individual who submits false records and indicate compliance with certain contractual or regulatory requirements
- Hospital who obtains interim payments from Medicare and knowingly files false cost reports to avoid refunding the Medicare program

How can Contract Management help?

Contract management can assist in oversight and tracking contractual information to ensure compliance and accuracy.

- ✓ Is the contract current and signed properly?
- ✓ Are rates listed and within acceptable limits?
- ✓ If lease, are rates adjusted to account for CPI Inflation?
- ✓ Are invoices accurate and reflect contractual agreed upon rates?
- ✓ Are services being performed and paid that are not in contract?
- ✓ Are invoices based on current, signed contract?

The Joint Commission

Joint Commission on Accreditation of Healthcare Organizations (JCAHO)

Accredits and certifies healthcare organizations and programs identifying an organizations commitment to meeting certain performance standards.

Contract Management can assist by:

- Providing Access to Contractual Information
- Providing Documentation of Contractual Obligations and Compliance with Government Regulations

Source: <http://www.jointcommission.org>

Social Media in Your Organization

Compliance Concerns and Best Practices

What Social Media Can Do

- Provide Information and Education
- Provide Insight on Healthcare Issues and What May be Coming
- Foster Discussion on How Organizations are Addressing Healthcare Challenges
- Encourage Dialogue
- Connect Individuals with Unique and Different Perspectives
- Promote Sharing of Best Practices

Social Media Concerns

- Violation of HIPPA or Other Privacy Laws
- eDiscovery (Electronic Discovery)
- Archiving of eDocuments
- FINRA Regulation
- Libel/Defamation
- Release of Proprietary Information
- Productivity of Employees

eDiscovery (Electronic Discovery)

Amendments to the Federal Rules of Civil Procedure – December 2006

eDiscovery: the obligation of parties to a lawsuit to exchange documents that exist in electronic form.

eDocuments: documents that exist only in electronic form

Examples:

- Information on Websites (including Social)
- Email and Instant Messages
- Voicemails and Audio Files
- E-calendars
- Photographs

Source: www.cio.com, www.ediscoverylaw.com and <http://www.uscourts.gov>

Best Practices

- Establish a Formal Policy
- Communicate Your Organization's Policy
 - ▣ Explain Why the Policy is in Place
 - ▣ Enforce Policy with Assistance from IT Department
- Educate Physicians, Employees and Vendors
 - ▣ How to Use Social Media Sites
 - ▣ How to Avoid Getting Themselves and Organization in Trouble
 - ▣ Regulatory Issues
- Provide Guidance
- Encourage Use of Common Sense

“Limiting people’s access to social media in the workplace will inhibit the growth of community and discourage useful information sharing. It also sets up a generation gap within the organization”

Paul Levy, Chief Executive Officer, Beth Israel Deaconess Medical Center

Role of Contract Management

Contract Management:

- ❑ Provides Oversight and Streamlines Management of Contractual Obligations
- ❑ Provides Transparency
- ❑ Supports Compliance
- ❑ Assists in Oversight of Contractual Costs
- ❑ Effectively Assists in Management of Audits or Requests for Contractual Information

Ways to Track your Contracts

- ❑ Paper Files
- ❑ Outlook or Electronic Calendar
- ❑ Excel Spreadsheet
- ❑ Access Database
- ❑ Database Developed within Organization
- ❑ Electronic Contract Management System

Your Process Should...

- ❑ Provide Solutions for Monitoring Compliance with Government Regulations
- ❑ Provide Oversight of Contractual Agreements
- ❑ Track Critical Dates of Contractual Obligations
- ❑ Track Supporting Business Critical Documentation
- ❑ Provide Access to Contractual Information and Costs
- ❑ Store Archived Documents
- ❑ Be Secure and Easily Accessible to Identified Individuals