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Managing physician agreements and staying out of scandalous headlines

By Gail Peace

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If you've been to the bustling Gaslamp Quarter in downtown San Diego recently, you have probably seen the surge of what transportation experts call the "micro-mobility trend." New bike and dockless e-scooter-sharing services are flourishing on almost every street corner. It's a fun, economic way to travel around town and the kind of social movement that will continue to boom, not just in busy California cities such as San Diego, but all over the country, and even the world.

However, like every trend that seems well-intentioned (who wouldn't want to ride around on something that looks like it's from the movie *Back to the Future II*?), the people behind micro-mobility programs face their own challenges. In fact, for every headline announcing a new e-scooter program, you are likely to find a story about disgruntled business owners in the same part of town who are tired of congested sidewalks. And then there are the headlines about injuries and the inevitable uptick in emergency room visits as a result of said programs. But these types of complications can be expected when change is occurring. And, despite such challenges, companies that focus on micro-mobility are not backing down, nor are they giving up on expansion opportunities. They are figuring out new ways to get bigger and better.

It is a lesson we can all learn from in the healthcare world, particularly when it comes to managing the proverbial thorn in a hospital's proverbial side: physician contract compliance. Like the transportation industry, physician arrangements represent an area of a hospital's operations that, in many ways, has been evolving for a while now (but still needs improvement). The fact is, most hospitals and health systems have a multitude of physician contracts to manage all at once, and these arrangements can be extremely difficult to track due to their inherent complexities. In 2018 alone, the Office of Inspector General (OIG) reported recoveries of \$2.91 billion, criminal actions against 764 individuals and entities, and civil actions against 813 individuals and entities.^[1] Physician arrangements were usually at the center of these investigations and damaging news stories. But, similar to the micro-mobility movement, when the going gets tough, hospitals organizations need to get tougher and more resilient—especially with their approach around physician-contract compliance. And there are specific ways to do just that.

Why are physician contracts so regulated?

The bottom line is clear when you consider all of the implications from the Stark Law^[2] over the past 20 years. Anytime you pay a physician who is a referral source, you have to be within the safe harbors of both the Stark Law and the Anti-Kickback Statute (AKS). The government has a keen interest in making sure healthcare providers do not overpay physicians. They really care, because those overpayments drive up the costs of healthcare to all

patients, including Medicare and Medicaid enrollees.

So, what's a hospital to do? There are actually seven things you should take action on, not only at the start of the contract, but also throughout the life of the contract. Here is a quick rundown of boxes to check on your physician agreements:

- Ensure a term of at least one year.
- The agreement must be in writing.
- Specify aggregate payments and set them in advance.
- Ensure the payment is reasonable and at fair market value (FMV).
- Compensation must not relate to volume or value of business.
- Outline the exact services to be performed.
- Services must be commercially reasonable.

This all sounds easy enough, but then why are there so many Stark Law and AKS settlements? Well, violating the Stark Law carries strict liability, meaning the government does not care if you meant to do it or not—or, said another way, intent is not needed. You broke the rules; you pay the fine. The other reason is that it is easy to break the rules if the physician does not provide documentation that they performed the work. For example, the documentation does not match the exact services provided, or worse, the physician is paid for things not in the contract. The easiest way to get sideways is to miss a payment mechanism in the contract. For example, the contract states that the physician will not be paid for more than 20 hours a month, yet the organization inadvertently paid for more than 20 hours. These two elements, the payment and the documentation, need to be evaluated every time a payment is made. This is easy to overlook, because so many hospitals do this manually.

Compliance can feel “Big Brotherish”

Physician partners are the most important part of a hospital's overall strategy. Why? Because no one other than a physician can admit a patient, render a diagnosis, or order services to improve the health of patients. Physicians have spent decades developing their trade in patient care. Yet, they may not have a full appreciation for everything we know about compliance. In fact, they may suspect the hospital is intentionally trying not to pay them or to slow down payments. At the end of the day, physicians may see compliance associates as police in business suits, and think that they are being a tad dramatic.

Here are a few things that can help:

- As your organization brings on new physician contracts, spend a few minutes with the physician at the start, explaining that it is important to stay within the regulatory environment.
- Get the physician to buy in to following the rules carefully.
- Share the one-page OIG Fraud Alert, ^[3] released June 9, 2015, with the physicians. This four-paragraph document explains that physicians who enter into compensation arrangements must make sure the arrangements are legitimate and fit within the guidelines. It further explains that physicians who commit fraud are subject to criminal, civil, and administrative sanctions.

Physicians are competitive by nature and are rule followers, too. In all cases, being open and transparent with

physicians about the risks and rewards of these arrangements will go a long way in securing their trust. Explain the details of your compliance program in order to break down the barriers. And walk them through the elements of your compliance program that protect these relationships and all those working in them.

Engaging your physician partners

There is an inherent lack of trust between physicians and hospitals, and when they are employed, it can even become more difficult. The old adage of walking a mile in someone else's shoes is an important thing all hospital leaders should do. Physicians are dealing with huge fallout from the electronic health record (EHR) decisions. They are working more hours in a day and seeing fewer patients with all these new EHR systems. They have less time for patient care. And, on top of everything else, they are burned out. We are overburdening physicians with new systems, processes, and red tape, so any proposed change needs to have valid benefits to the physician. From a personal perspective, I am surprised every day by hospitals that consider making changes that will impact physicians without asking them how best to achieve the goal. As my little niece says, "It's not a good look."

As parents and caretakers, we know dictating isn't always the answer. It's all about positioning. Appeal to the stakeholders with fact and feeling. The same applies to our relationships with physicians. Respect them. Ask them how you can make their lives easier in terms of the goal. It is really just that simple. If you present why the change is needed, the benefits, and the risks of not doing so, physicians will work with you. I promise.

Final best practices

So now you are ready to reexamine your organization's hospital-physician contract approach as it stands today. Based on my experiences working in and with hospitals over the last two decades, here are my best practices to better managing the payments, keeping you within the lines of regulations, and helping you avoid everything that can go wrong.

Let's use an example of a physician who is independent and providing either a medical directorship or on-call coverage for your hospital. Here are three steps to make this as burden-free as possible.

Streamline the processes

Only the essential people should be involved in managing the process. Show the doctor what documentation is expected each month and make it easy for them to submit. Make it clear who receives the documentation. On the hospital side, assign accountability to each level of review and cut out unnecessary steps. Some time logs can be signed by as many as nine people. What is the value here?

Standardize the payment processes

If a check request is needed, is it needed for every payment? What format is the time log in? Giving physicians a blank time log without any guidance never ends well.

Automate

Make it easier for physicians to stay in their lane. Provide them with technology that respects their time and makes it easier to record time by first selecting a duty from their actual contract, then making a quick note. Technology can protect your organization from the human error that occurs with manual processes.

Conclusion

The bottom line is that it takes little effort to do things the right way the first time. Take the time to enlist the

physicians in your compliance program, and make sure they understand the severity for both parties when we get outside the rules of the contract. Finally, it's 2019! If you are still collecting physician time logs on paper, it is time to automate! Similar to the micro-mobility trends I talked about in the beginning of this piece, people will eventually embrace big change if it benefits them now or in the long run. Change and modernization are never easy and come with their own set of challenges, but they are almost always worth it—especially in the complex world of physician contracts.

Takeaways

- Physician arrangements are a highly regulated business.
- You must consider compliance implications when you initially set up a physician contract and as you manage the contract throughout the year.
- Physicians might feel skeptical about compliance efforts by the hospital, if compliance is not presented as part of the overarching culture.
- Physicians often do not understand the full significance of compliance. Engage them in the process.
- Enact best practices to ensure your organization manages each physician payment appropriately—streamline the process, standardize the payment approach, and embrace automation and change.

1 U.S. Department of Health and Human Services (DHHS), Office of Inspector General (OIG), Semiannual Report to Congress April 1, 2018 – September 30, 2018. <https://bit.ly/2UsKNNd>

2 42 U.S.C. § 1395nn Limitation on certain physician referrals (Stark Law)

3 DHHS OIG, “Fraud Alert: Physician Compensation Arrangements May Result in Significant Liability” June 9, 2015. <https://bit.ly/2Ge8nob>

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