COSMOS
Navigate the Compliance Universe

Compliance Today - July 2024

Bob Wade (bob.wade@nelsonmullins.com, linkedin.com/in/bob-wade/) is a Partner at the law firm Nelson Mullins, based in Nashville, TN. Bob counsels clients on fraud and abuse issues, fair market value, commercial reasonableness, and developing, monitoring, and documenting effective healthcare compliance programs.

Due diligence and physician financial arrangements

by Bob Wade

Conducting due diligence for physician and provider compensation arrangements during a healthcare transaction is critical for the acquirer. Appropriate due diligence is necessary, regardless of whether the transaction is a stock or asset purchase. If inappropriate financial arrangements exist and continue post-transaction, the acquirer will assume liability under both acquisition scenarios. If the transaction is a stock purchase, the acquirer will literally "step into the seller's shoes" and potentially assume all pre-transaction liability.

Scenario

A hospital is acquiring a multispecialty group practice (group practice). Post-transaction, the hospital conducts a billing review, including the claims submitted for services provided by orthopedist Dr. Amie Atu. When the hospital reviewed the reimbursement for claims submitted by Atu, both pre- and post-acquisition, the hospital discovered that approximately 25% of the claims submitted were not supported by the applicable medical records. Atu was compensated based on a work relative value units (wRVUs) compensation model. Atu was a high producer, with "personally performed" wRVUs at approximately the 90th percentile. In consultation with outside legal counsel, the hospital has determined it is possible that the group practice, pre-acquisition, and the hospital, post-acquisition, have received reimbursement from all payers—including Medicare and Medicaid—that may result in a 25% overpayment. Likewise, because Atu was paid on a productivity compensation based upon wRVUs, it is possible that Atu's total cash compensation (TCC) exceeded what she should have been paid, possibly resulting in TCC that is above fair market value (FMV). Atu was and will continue to be a substantial referral source to the hospital.

When the hospital contacted its transactional attorneys, it was informed that Atu's medical record documentation and corresponding reimbursement were not reviewed during due diligence. However, the transactional attorneys confirmed that Atu's employment agreement was reviewed.

Problem

This scenario poses material risks under the Civil Monetary Penalties Law (CMP),[1] Physician Self-Referral Law (Stark Law),[2] Anti-Kickback Statute (AKS),[3] and potentially the False Claims Act (FCA).[4] The CMP is implicated as the group practice and hospital received reimbursement that has been determined not to be appropriately documented in the medical record or not to be medically necessary. The Stark Law is implicated because Atu potentially received TCC above FMV while Atu referred designated health services (DHS) to the hospital. The AKS could potentially be implicated if it was determined that either the group practice or the

Copyright © 2024 by Society of Corporate Compliance and Ethics (SCCE) & Health Care Compliance Association (HCCA). No claim to original US Government works. All rights reserved. Usage is governed under this website's Terms of Use.

hospital intended to compensate Atu above FMV to induce Atu's referrals. The FCA is potentially implicated since the hospital now has knowledge that (i) reimbursement was received from payers—including Medicare and Medicaid—that is not supported by applicable medical records, and (ii) all of Atu's referrals of DHS to the hospital are potentially subject to repayment due to a potential violation of the Stark Law.

All of this could have been avoided if appropriate due diligence regarding Atu's medical record documentation and compensation had been analyzed before the hospital acquired the group practice.

This document is only available to members. Please log in or become a member.

Become a Member Login

Copyright © 2024 by Society of Corporate Compliance and Ethics (SCCE) & Health Care Compliance Association (HCCA). No claim to original US Government works. All rights reserved. Usage is governed under this website's Terms of Use.