TOP COMPLIANCE ISSUES OF 2013

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Private Payer Reviews

Increased Audits
- Increased Availability of Electronic Data
- More Immediate Audits - Determination of “Medically Necessary” Before or During Treatment
- Providers Need to Respond Quickly
- Pre-claim reviews (no more pay and chase)

Self-Denials
- Hospitals Discount Claim Pre-Submission (or No Submission)
- Sometimes False Assumption that Payer Will Deny

Sequester
Private Payer Reviews Continued

Tips

• Know Your Contracts
• Review Billing Rules for Each Private Payer
• Awareness of Arbitrary Payer Policies
• Understand and Utilize Appeals Process
• Educate Staff
CAH Decertification

- CAHs Not Meeting Location Requirements
  - 35 miles from another hospital
  - 15 miles from another hospital if mountainous terrain
- Pre-2006 - State Designated “Necessary Providers”
  - Necessary Providers ≠ Location Requirements
- Gov’t Savings = $449 Million in 2011 if CAHs <15 miles from other hospitals were decertified

Congressional Action Needed to Make Changes
Billing Compliance

• “Ordering Physician Rule”

• WA Reimbursement Issue: Non-Medicaid Providers Treating Medicaid Patients at Hospitals

• Site of Service Compliance

• “Two-Midnight Rule”
Medicare/Medicaid RAC Audits

• Medicare RAC Audits for Region D Q2
  • $226.2M Total Quarter Corrections
  • $452.1M FY to Date Corrections

• Medicaid RAC Efforts
  • ACA expanded RACs to Medicaid
  • Desk Audits & Onsite Audits

• Top Issue for Region D: Minor Surgery & Other Treatment Billed as Inpatient (medical necessity)
CMS Programs & Penalties

• EHR Meaningful Use - Professionals & Hospitals 2015
  • Professionals = 1% Reduction to Medicare Part B Reimbursements
  • Hospitals = 25% Reduction to Medicare Part A Reimbursement Increases

• e-Prescribing Penalties - Professionals
  • Reductions in Medicare Part B Reimbursements Began in 2012
  • 2014 = 2% Reduction to Medicare Part B Reimbursements

• PQRS Penalties - Professionals
  • 2015: 1.5% Reduction in Medicare Part B Reimbursement (based on 2013 Reporting)
  • 2016: 2% Reduction in Medicare Part B Reimbursement (based on 2014 Reporting)

EHR, eRx and PQRS also have incentive payment opportunities (which will avoid penalties)
Readmissions Reduction Program

• Applicable Conditions:
  • Acute Myocardial Infarction (heart attack)
  • Heart Failure
  • Pneumonia

• Medicare Payment Adjustments
  • 2013 - up to 1%
  • 2014 - up to 2%
  • 2015 - up to 3%

• CMS projects $280 million from 2013 penalties
Excluded Providers

- No Federal Payment for Services Ordered/Performed by Excluded Provider
- Employees & Contractors
  - Providers & Entities
  - Administrative & Management functions
- Penalties & Criminal Liability
  - 2013: Between $3K - $214K
- Check LEIE Database
  - Before Hire/Contract
  - Monthly/Periodically
HIPAA

• New HITECH Rules Published in January
• Compliance by **September 23, 2013**
• Increased Penalties for Non-Compliance
• Changes to:
  • Business Associate Agreements
  • Breach Notification Rules
  • Notice of Privacy Practices
  • Individual Rights to Access & Restrict Disclosures of PHI
  • Fundraising & Marketing Communications
  • Sale of PHI
False Claims Act

- General Prohibition Against Submitting False Claims
  - Stark Law
  - Anti-Kickback Statute
  - Mandatory Reporting of Overpayments
- Increased Whistleblower Incentives
  - 15-30% of Settlement/Verdict
  - No Retaliation
- 60 Day Overpayment Rule (from ACA)
- WA State Medicaid False Claims Act
  - WA Retains Share of Recovery
Stark Law Enforcement

- Stark Law Enforcement Actions

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<th>Tuomey</th>
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<tr>
<td>• $39M Jury Verdict</td>
<td>• $600M DOJ Demand</td>
<td>• $25M Settlement</td>
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<td>• $277M False Claims Act</td>
<td>• Physician Contracts - FMV</td>
<td>• Leases &amp; Physician Contracts</td>
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- Self-Referral Disclosure Protocol
Stark Law Applicability

• Example Areas of Stark Applicability
  • Joint Ventures with Physicians
  • Personal Services Arrangements
  • Facility and Equipment Leases
  • Gifts to Physicians (Only Nominal Amount Permitted)
  • IT Donation Arrangements - Final Rule on Extension Pending

• Review Agreements Between Hospitals and Physicians
  • Expired Agreements?
  • Services Consistent with Terms of Agreement?
  • FMV of Compensation/Commercially Reasonable
  • Tracking Payment of Gifts & Entertainment
IRS 501(c)(3) Obligations

• New ACA Mandated Requirements
  • Conduct a Community Health Needs Assessment Every 3 Years
  • Adopt Implementation Strategy to Comply with the Assessment Requirement

• Needs Assessment Must Include:
  • A Description of the Community Served by the Hospital
  • A Description of the Process & Methods used to Conduct the Assessment
  • A Description of all of the Community Health Needs Identified Through the Assessment,
  • A Description of the Existing Health Care Within the Community Available to Meet the Needs
Physician Classification

• Independent Contractors vs. Employee
• Multi-Factor Test
  • Direction & Control of Hospital
  • Registered Business within WA State
• Verify that Independent Contracts have UBI
• If Employee, Hospital Must:
  • Pay Workers’ Compensation Taxes for the Physician
  • Meet Wage & Hour Requirements
  • Pay Unemployment Tax
• Failure of Compliance: Back Taxes and Penalties
Peer Review in Washington

• Peer Review Committee Records Remain Confidential
  • Must be the Peer Review Committee (but non-physicians allowed)
  • Maintain Documentation
• Public Records Act Implications