Health Care Compliance Institute

Issues in Academic Medical Compliance: Bridging the Great Divide

Physician Contracting Issues

April 15, 2018

Kim F. Bixenstine, J.D., CHC
Chief Compliance Officer, University Hospitals, Cleveland, Ohio

University Hospitals
Cleveland | Ohio

INTRODUCTION

- University Hospitals (UH), Cleveland, Ohio
  - Serves 15 counties in Northeast Ohio
  - Nationally recognized academic medical center, including leading children's and cancer hospitals (UH Rainbow Babies & Children's Hospital and UH Seidman Cancer Center)
  - 11 community medical centers; 3 joint venture hospitals; over 150 physician practice locations
  - Second largest employer in Northeast Ohio

INTRODUCTION (cont'd)

- Over 4,700 providers
- Over 25,000 non-physician employees
- Over 1,100 residents and fellows in training
- Total annual revenue of >$4 billion
- Recognized 6 times as World's Most Ethical Company by Ethisphere Institute

INTRODUCTION (cont'd)

- UH Chief Compliance Officer
  - Reports to CEO and Audit & Compliance Committee of UH Board of Directors
  - Reviews potentially higher risk physician arrangements
  - Educates on physician arrangements

PHYSICIAN CONTRACTING/REIMBURSEMENT QUESTIONS FOR DISCUSSION

1. Provider Compensation Issues
   - Faculty vs. community – what benchmarks do you use?
   - Compensation models – incentives for productivity? quality? other?
   - Incentives for research?
   - Review of compensation
     - Who reviews? (e.g., management only? legal? compliance? only agreements involving compensation over certain levels?)

PHYSICIAN CONTRACTING/REIMBURSEMENT QUESTIONS FOR DISCUSSION (cont'd)

2. Medical Directorships
   - Who reviews?
   - What are your policies? (time sheets, how detailed must they be? who reviews? who authorizes payments?)
   - How often is need for medical directorship re-evaluated?
   - Any difference in treatment for employed vs. independent providers?
   - What challenges do you face?
   - Consequences for non-compliance?

PHYSICIAN CONTRACTING/REIMBURSEMENT QUESTIONS FOR DISCUSSION (cont'd)

3. Reimbursement Challenges
   - Shift in percentage of revenue from different payers? (e.g., increases in Medicaid, decreases in commercial payer reimbursement?)
   - Increased denials for reimbursements?
   - More aggressive behavior by commercial payers (e.g., litigation for alleged fraud or non-compliance)?
   - Push back from providers

University Hospitals

1. **Provider Compensation**
   a. Benchmarks
      - Compensation benchmarks by specialty/subspecialty, position, academic rank, and geographic area
        - Medical Group Management Association (MGMA)
        - Association of American Medical Colleges (AAMC) (for faculty)
        - American Medical Group Association (AMGA) (for community physicians)
        - Association of Administrators in Academic Pediatrics (AAAP)
        - Association of Administrators in Academic Radiology (AAARAD)
        - Consultant database
        - Average surveys over 5 year period to smooth out large swings in data

University Hospitals (cont'd)

- Productivity benchmarks
- "Business Judgment" Factors; e.g., need in community for specialty, competing offers, historical income, difficulty in recruitment, etc.
- Benchmarks for community physicians usually higher than academics

University Hospitals (cont'd)

b. Compensation Models
- Uniform faculty compensation plan
- Establishes procedures for base compensation and incentives
- Consistent with Fair Market Value guidelines and commercial reasonableness
- Considerations:
  - Clinical quality, patient safety, patient satisfaction and other PFP metrics
  - Productivity measures (e.g., wRVUs, professional services revenue, encounters, new participants)
- Incentives
  - Percentage of clinical base compensation
  - Productivity threshold
  - Citizenship criteria (e.g., in compliance with Code of Conduct)

University Hospitals (cont'd)

c. Review of compensation
- Higher scrutiny if $\geq$75th percentile of benchmarks
- Must document FMV and commercial reasonableness
- Chief Compliance Officer must approve where:
  - Total Cash Compensation / wRVUs >60th percentile
  - If $\geq$90th percentile
  - If independent third party appraisal is not unqualified

University Hospitals (cont'd)

d. Research Incentives
- Start up fee once clinical trial becomes open and active
  - Signed clinical trial agreement
  - Approved coverage analysis and clinical budget
  - IRB approval
  - Collaborative Institutional Training Initiative (CITI) training (for human subject research) current
  - Feasibility process and target enrollment set
  - Site initiation visit
  - Successful enrollment of at least 1 study subject
  - For industry sponsored studies (with sponsor agreement)

University Hospitals (cont'd)

- Study visit fee – hourly rate
- Successful Closed Trial Fee
  - Site close out visit
  - All funds from sponsor collected
  - Study related expenses charged
  - No open data inquiries from sponsor
  - No serious data breaches
  - At least 75% enrollment based on original target goal
  - No unresolved research compliance issues
  - Study terminated with IRB (unless sponsor requests study remain open for publication)

University Hospitals (cont'd)

2. **Medical Directorships**
   - Signed by both parties
   - Specifies:
     - Services to be performed
     - Time frame for arrangement
     - Compensation
   - Financial terms must:
     - Be set in advance
     - Be FMV and commercially reasonable
     - Not take into account volume or value of referrals
   - Require contemporaneous time sheets

University Hospitals

- No agreements with "ineligible persons"
- Must be approved by Legal Department and applicable business leader
- Compliance review often requested by Legal if compensation seems high or other concerns
- Legal/Compliance/Internal Audit review on regular, periodic basis and upon management request and when concerns are present
- Issues with:
  - Time sheets always the same
  - Insufficient review of time sheets
  - Need for medical director no longer exists or need lesser amount of service
  - Charging for unnecessary services

University Hospitals

3. **Reimbursement Challenges**
   - Disadvantageous shifts in payers
   - Rates higher for faculty physicians than community
   - Large self-funded employers (e.g., Walmart, Boeing) putting pressure on managed care payers
   - Increases in denials
   - More aggressive behavior by commercial payers
     - Aetna case against Northern California Surgical Centers: $37 million verdict
     - United Healthcare case against Renal Associates (motion to dismiss granted May, 2017)

University Hospitals

- Many different payer rules; rules inconsistent among payers; rules constantly changing
- Providers must ensure accurate billing and documentary support for treatment
- Providers should keep all communications with payers
- Actions again payers for improper denials and underpayments
  - Humble Surgical Hospital, LLC case awarded >$13 million to cover underpaid claims and ERISA penalties (reversed on appeal, appellate court found while contract interpretation by payer legally incorrect, no abuse of discretion by payer).

Questions?

Kim Bixenstine, J.D., CHC
Chief Compliance Officer
University Hospitals, Cleveland
216.767.8228
Kim.Bixenstine@UHhospitals.org