



Physician Arrangement Monitoring: Legal and Audit Perspectives for Practical Application

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Disclaimer

The information contained in this presentation are the views of the presenters and do not represent the opinions of any entity with which we have had past, present, or future affiliation.



Professional Information

- **Laura Wilson:**
 - Experience as a healthcare lawyer for hospitals and health systems throughout the country.
 - Currently Registered In-House Counsel/Assistant General Counsel for the Bay Area at Sutter Health
- **Patrick Matchell:**
 - Experience as an accountant and an auditor working with clients in the financial services, manufacturing, and healthcare industries.
 - Currently serve as the Director of Compliance Auditing and Monitoring at Sutter Health
 - Maintain the following credentials: Certified Public Accountant (CPA), Certified Fraud Examiner (CFE), and Certified in Healthcare Compliance (CHC).



Presentation Topics

- 1. Physician Arrangements Overview**
- 2. Relevant Guidance and Recent Developments**
- 3. Auditing & Monitoring Process Summary**
- 4. Practical Auditing and Monitoring Considerations**

Physician Arrangement Overview

- **Any Engagement with a Physician***

- Definition of a “Physician”
- Types of arrangements/engagements



- **Designated Health Services**

- **Other Referral Sources**

Relevant Guidance

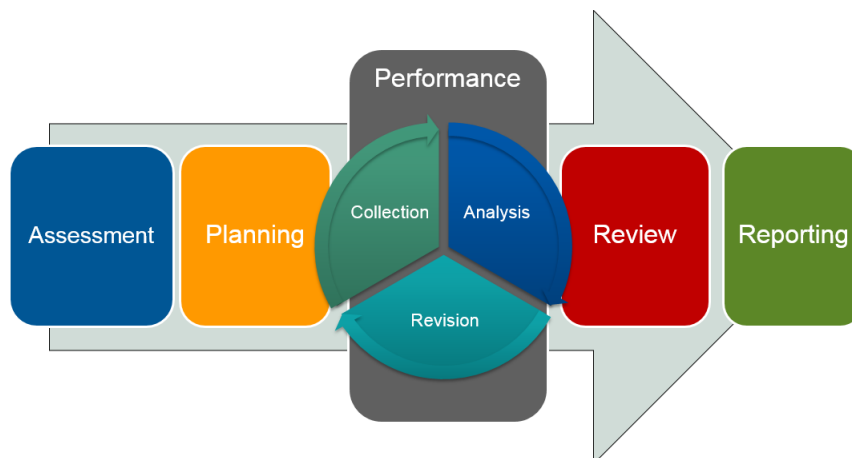
- **Physician Self-Referral Law (aka “Stark Law”) prohibits physicians from referring Medicare/Medicaid patients to receive designated health services from entities with which the physician or an immediate family member has a financial relationship, unless an exception applies.**
 - Strict liability statute.
 - Prohibits the submission of claims to Medicare/Medicaid in violation of the law.
 - Exceptions: personal services exception, time-share exception, equipment lease, office space lease.
 - Most states have their own version of a Physician Self-Referral Law
- **Federal Anti-Kickback Statute is a criminal statute that prohibits the knowing and willful payment of remuneration to induce patient referrals involving an item/service payable by a Federal payor program.**
 - Most states have their own version of the Federal Anti-Kickback Statute.

Recent Developments

- CMS and the OIG unveiled a proposed rule in October 2019 to modernize both the Stark law and the Anti-Kickback Statute
- Advancing value-based care by adding three new exceptions to Stark for value-based care arrangements
- Clarifications to terminology
 - Commercially Reasonable
 - Volume/Value Standard




Process Summary





Assessment

- **What Needs to Be Done?**
- **What are the Risks?**
 - Should Perform a Risk Assessment, as needed
 - Continue to ask “What are the Risks” in a “5 Whys” fashion
- **Who are the Impacted Parties and Key Stakeholders?**
 - Who will you need input/data from?
 - Who are the relevant parties impacted by reporting?
- **Contemplate Timeline and Members of Project Team**



Planning - Overview

- **Team Construction and Resources**
 - Who is the right person(s) to lead the project
 - What knowledge and technical expertise is necessary
 - Team size requirements/considerations
- **Identify Scope, Objectives, Criteria**
 - Consult with available internal resources
 - Set the project up for success
- **Finalize Timeline and Cadence**
 - How long will the project take
 - How urgent is the project
- **Consider the End at the Beginning**
 - What type of report out will be needed
 - Who are the recipients of the determined report type

Planning - Scope and Objectives

- **Determine the Project Scope**

- Timeline
- Contracts In and Out of Scope
 - Medical Directors
 - Call Coverage
 - Leases
 - Others
- Be Wary of Scope Creep



- **Define Clear Objectives for Project**

- Succinctly state what you want to accomplish
- Should reflect results of risk assessment exercise

Performance Criteria

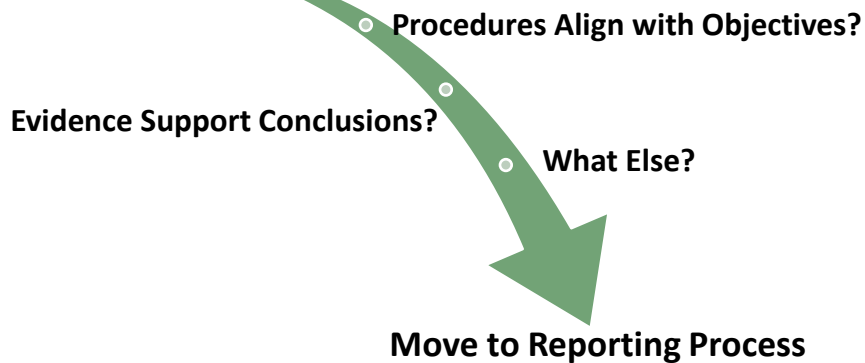
- **What Steps/Analyses are Going to be Performed**

- Requirements
 - Contract in Place
 - FMV
 - Correct Payments
 - Others
- Potential Additional Wants
 - Alignment with Internal Policies
 - Promoting Best Practices

- **Consider Risk Rating and Weighting of Criteria**

Review

Stop and Take a Breath



Reporting

"The single biggest problem in

COMMUNICATION

is the illusion that it
has taken place."

- **GEORGE BERNARD SHAW**

Reporting - Find a Recipe

- Reiterate the Scope and Objectives
- **5 C's of Report Writing**
 - Condition
 - Criterion
 - Consequence
 - Cause
 - Corrective Actions
- Clearly State Project Results and CAPs
- **Always Keep the Reader in Mind**
 - *What are the Intended Takeaways and Feelings*



Reporting - Visuals & Control

Tier 1	Scorecard Weighting	Review Period			
		'18Q3	'18Q4	'19Q1	'19Q2
Criteria 1	30%	100%	100%	100%	100%
Criteria 2	15%	100%	100%	100%	100%
Tier 2					
Criteria 3	10%	100%	100%	89%	100%
Criteria 4	10%	100%	100%	100%	100%
Criteria 5	10%	100%	93%	100%	88%

- **Clearly Layout Corrective Action Plans, as Needed**
- **Determine How to Track and Monitor the CAPs**

Questions

