

Seven Component Framework For Compliance Auditing & Monitoring Physician Contracting In Healthcare Organizations

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Introduction

In January 2004, several Association of Healthcare Internal Auditors (AHIA) members (referred to as the A&M workgroup) developed seven key components that will serve as an industry standard for the auditing and monitoring processes. These seven components were thoroughly reviewed in the document dated May 26, 2004 titled "AHIA Auditing and Monitoring Framework – Seven Key Components". Subsequently, a focus group of Health Care Compliance Association (HCCA) and AHIA members met to explore opportunities to better define and explain auditing and monitoring, and to clarify the roles of compliance and internal audit functions as they address issues within their healthcare organizations. This HCCA/AHIA team agreed to refine the framework slightly and publish guidance on recommended roles and responsibilities for compliance and internal audit functions in auditing and monitoring. The first article from the HCCA/AHIA team was "Seven Component Framework For Compliance Auditing & Monitoring In Healthcare Organizations" dated August 19, 2004. In order to better understand this physician contracting model, we urge you to read both of these articles.

The *Seven Component Framework* for compliance auditing and monitoring is comprised of the following:

- Perform a risk assessment and determine the level of risk.
- Understand laws and regulations governing those areas to be monitored and possibly audited.
- Obtain and/or establish policies for specific issues and areas, define accountability in the policy, and develop procedures to support the policies.
- Educate on the policies and procedures and communicate awareness of key requirements.
- Monitor compliance with Laws, JCAHO, and organization's policies and procedures.
- Audit the highest risk areas.
- Re-educate staff on the law, policies and procedures, issues identified in the audit, and corrective actions planned or taken.

The A&M workgroup used the *Seven Component Framework* to develop a model for physician contracting. This document applies the seven key components for auditing and monitoring to the operational processes of contracting physician services.

Perform a Risk Assessment and Determine the Level of Risk

Risk assessment and ranking involves each organization's customized approach regarding how they view risk. For physician contracting, the risk process could involve determining answers to the following questions?

- Do documented policies and procedures exist for physician contracting? Are they comprehensive? Are they followed?
- Is physician contracting centralized?
- Are key personnel aware of the regulations impacting physician contracting?
- Can all physician contracts be located?
- Can all payments to physicians be identified?
- Can the total dollars, number of transactions and types of payments be determined? For example, is the payment related to expense reimbursement, payroll, contract payments, relocation/recruitment, medical director fees, rent, continuing education, clinical trial residuals, intellectual property royalties, speaking fees, etc.

Understand Laws and Regulations Governing those Areas to be Monitored and Possibly Audited

It is important to ensure that management within your organization is knowledgeable of all rules, regulations and guidelines mandated by federal and state laws that govern processes applicable to the business operations of your organization related to physician contracting. This may include HIPAA, NCQA, JCAHO or other applicable criteria, such as insurance contracts, etc.

The following regulatory issues are important to physician contracting.

- Age Discrimination in Employment Act (ADEA): Prohibits discrimination against persons aged 40 and above in all personnel decisions, including hiring, training, promotion and discharge
- Americans with Disabilities Act (ADA): Applies to discrimination, accommodation and accessibility of individuals with disabilities
- Anti-Kickback Statute: Prohibits any remuneration in return for or to induce referrals of patients or for purchasing, leasing or ordering goods, facilities, services or items for which payment may be made by Medicare/Medicaid or other federal healthcare programs (e.g., CHAMPUS)
- Emergency Medical Treatment and Active Labor Act (EMTALA): Requires a hospital with an emergency department (and its hospital-based facilities) to provide to all persons requesting examination or treatment a medical screening to determine whether an emergency condition exists and, if it does, to provide treatment to stabilize such condition; prohibits transfer of an unstabilized patient unless it is an appropriate transfer
- False Claims Act (FCA): Prohibits knowingly presenting or causing to be presented a false or fraudulent claim for payment or approval by Medicare, Medicaid, or other federal payor, and knowingly making, using or causing to be

made or used a false record or statement to get a false or fraudulent claim paid or approved

- Family Medical Leave Act (FMLA): Requires employers to provide to employees unpaid leave to accommodate employees in the birth, adoption, or acceptance of a foster child, or in the care of a family member's "serious" health condition
- FDA Debarment: Prohibits pharmaceutical research collaboration by debarred individuals
- Government Access to Books & Records: Provides that the other party must make its books and records available to the U.S. Department of Health and Human Services (or other government agencies named) to verify the costs of services rendered. If the other party subcontracts part of the work (\$10,000 or more over a 12-month period), the subcontract must also contain a paragraph permitting governmental access to books and records.
- GSA Excluded Parties Lists: Provides a list of contractors and individuals who are barred from procurement and/or non-procurement programs, including healthcare programs receiving Federal funding or reimbursement
- OIG List of Excluded Individuals and Entities: Provides that no Federal health care program payment may be made for any items or services (1) furnished by an excluded individual or entity from the OIG list, or (2) directed or prescribed by an excluded physician
- Private Inurement and Excess Benefits: Prohibition against private inurement prohibits a tax-exempt organization from paying excessive compensation (more than fair market value) to corporate insiders, including physicians on the professional staff of the hospital. Prohibition against excess benefit transactions prohibits a tax-exempt organization from providing an economic benefit to any disqualified person if the value of the economic benefit exceeds the value of the consideration.
- STARK II: Prohibits physicians from referring Medicare or Medicaid patients for certain designated health services to entities with which they have a financial relationship except as specifically permitted by the statute
- Suspected Terrorists List: Lists suspected terrorists that should not be employed or contracted with organizations receiving Federal healthcare funding
- Title VII of the Civil Rights Act of 1964: Prohibits discrimination in employment based on race, color, religion, sex, or national origin; also prohibits retaliation against employees or applicants regarding hiring, promotion, work conditions or discharge.

Obtain and/or Establish Policies for Specific Issues and Areas, Define Accountability in the Policy, and Develop Procedures to Support the Policies

This step involves taking the law and incorporating the essential components of the law into corporate policy.

The physician contracting policy should define the process for entering into a contract with physicians for administrative and/or patient care services. In addition, the policy may address the following provisions:

- a. Arrangements with physicians that include compensation must be documented in a written contract agreement.
- b. Physicians should not be paid without a written contract.
- c. Physicians must be paid according to the terms of the contract.
- d. Timesheets are required for all Medical Directors Contracts.
- e. Requests for recurring payments should be submitted and approved by the Legal Department. Contracts requiring timesheets should not be set up as a recurring payment.

Policies should require full disclosure of all significant financial interests or relationships, which represent actual or potential conflicts of interest by contracting physicians and physician advisors who are in a position to influence decisions and activities.

All physician contracts should be prepared, reviewed and approved by the Legal Department and may include the following provisions.

- a. The contracting organization retains professional and administrative responsibility for the services rendered to its patients as a condition of its licensure.
- b. The physician shall comply with all bylaws, policies, rules and regulations of the organization and its medical staff. They shall also comply with all policies and procedures and standards of applicable licensing and accrediting agencies including state laws and JCAHO.
- c. Physicians should be licensed to practice medicine, board certified or have board equivalent training and a member in good standing with the medical profession.
- d. A signed statement that the physician shall not disclose confidential information, which specifically addresses HIPAA.
- e. The contract must be for a defined term of a least one year or contain language stating that if the contract is terminated within the first year, the parties may not enter into another agreement for substantially similar services for the remainder of that contract year.

The policy should also contain verbiage relating to the following specific factors:

- a. Contract Development Processes and Signature Authority
- b. Timesheet Submission and Physician Payment
- c. Contract Expirations and Renewal Processes
- d. Contract Provisions (i.e., non-compete, proprietary information, renegotiations, notices, waivers, insurance information, confidentiality, liability limits, etc.)
- e. Supporting Attachments
- f. Superseding of Prior Agreements and Amendments

A policy may be broad enough to cover the entire operations of a hospital. Thus procedures are developed to address specific departmental operations or functions. Procedures document how the department or staff implements the policy on a daily basis to ensure consistent actions by all employees. Detailed procedures provide a road map to guide you through the “how to” components of a process.

The procedures for physician contracting services include the organization’s internal processes.

The following elements are important to establishing, negotiating and executing the physician services contract:

1. Contract signature authority includes the power to bind into agreement with another party. The ultimate responsibility for contract review remains with Senior Leaders. In some instances this authority level may be delegated.
2. Basic Contracting Procedures
 - a. Before entering into contract negotiations, establish that the contact is within budget. If the contract is not within budget, obtain advance approval before proceeding.
 - b. Before any contract can be drafted or reviewed, a basic outline must be negotiated with the other party. The basic outline should address the parties, the purpose, the duration, the compensation, and the other business terms important to you or to the other party.
 - c. Once the basic contract elements have been actively negotiated with the other party, the details can be documented by adapting standard contract provisions to fit the particulars of the deal. To do this, you can begin with a previous contract on the same subject or a sample contract provided by another party.
 - d. Consider the “what if worst case scenario” to help identify business issues that need to be addressed as part of the deal.
 - e. Draft the new contract for review by appropriate parties.
 - f. Obtain confirmation that the other party intends to execute the contract and evaluate the appropriateness of any conditions requested.
 - g. Prepare a contracting review form (which is tailored to each facility to track specific requirements and approval chains) and all supporting documentation and submit to appropriate parties for review and approval
 - h. The Legal Department review should specifically focus on issues that present significant liability or risk to the organization (i.e., patient confidentiality, record retention, regulatory compliance issues, litigation if someone is hurt, clinical activities and/or clinical research).
 - i. Necessary action steps after required review and approvals are obtained should occur to finalize the contract.
 - j. Administrative procedures for facilitating the execution of the contract should be undertaken to obtain all necessary signatures and provide appropriate copies to appropriate parties.
 - k. Managing your contracts should include developing a tracking system to remind you of action dates, payments, as well as cancellation and renewal dates.

Educate on the Policy and Procedures and Communicate Awareness of Key Requirements

Under this step, the accountable leader of policies and procedures should develop an education work plan identifying those individuals and departments who need to be educated on a policy and procedure. This step is essential in integrating clinical and financial departments of a hospital and serves as an essential tool in reducing misinterpretation of a policy.

Critical staff education points related to physician contracting services:

- a. Developing contracts
- b. Understanding laws and regulations impacting physician contracting
- c. Contract approvals
- d. Contract requirements
- e. Effectively communicating the terms and conditions of the contract
- f. Properly executing contracts
- g. Timesheet submission and physician payments
- h. Contract expiration and renewal process
- i. How to effectively managing your contracts

In addition, education may want to occur to enhance the staff's knowledge of the use of standard paragraphs in contracts:

- **Amendments/Modifications:** May be part of a larger paragraph entitled "entire agreement; amendment". Provides that any changes or additions to any part of the contract must be in writing and signed by each party.
- **Assignability/Successors or Assigns:** Provides that the hospital may transfer its rights under the contract to an affiliated third party, and that any successor organization may enforce the agreement. This paragraph also commonly states that the other party may not transfer its rights or obligations to a third party without written consent of the hospital.
- **Exclusivity:** If the contract is non-exclusive, this paragraph states that either party may contract with other entities. If the contract is exclusive, this paragraph identifies the scope of the exclusivity.

Monitor Compliance with Laws, JCAHO, and Organization's Policies and Procedures

Monitoring tools should be developed for physician contracts. Once the monitoring tools are developed, it is important that such tools are routinely reviewed to determine whether they are effective. Examples of monitoring include:

1. Develop management reports, which allow you to verify accuracy of physician's contract payments on a periodic basis.
2. Develop an audit checklist to ensure that contracts are complete and in compliance with organization policies and procedures. Allow staff members to perform independent reviews of each other's Contracting Review Form for accuracy and completeness.
3. Develop databases of existing contracts that generate reports to assist with renewal dates of contracts and other important requirements.

Audit the Highest Risk Areas

Internal audits are performed by individuals who are outside the department and are independent as well as objective regarding the issue or process to be audited. An audit is a formal, methodical review which usually includes sampling of data, testing of processes, validating information, identifying risk areas and lack of internal controls, and developing

recommendations and corrective action measures. The outcome of an audit is typically a written report to management communicating findings, recommendations and incorporating management's responses. Monitoring activity should be implemented by the department following the audit where applicable.

Performing audit reviews of physician contracting services should include the following:

1. Planning the engagement
 - a. Review of pertinent policies and procedures
 - b. Review of federal and state laws
 - c. Performing walkthroughs with departmental staff
2. Establishing the objectives and scope of the audit
 - a. The objective is to determine contracts were drafted and approved in accordance with organizational policy and governance processes, ensure compliance with mandated laws and regulations, and accuracy of physician contract payments.
 - b. The scope of the audit includes reviewing a sample of existing contracts executed during the time period January 1 through December 31, 2003.
3. Perform audit procedures
 - a. Determine that departmental policies and procedures are current and accessible to all staff members.
 - b. Select a sample of physician contracts.
 - c. Review contracts for appropriateness of contents, dates of contract, and approval signatures.
 - d. Ensure that contracted physicians meet the contract requirements of the organization and state laws.
 - e. Review supporting documents of contracts such as privacy and confidentiality agreements for proper signatures.
 - f. Obtain physician's payment documentation and determine if they were paid according to contractual provisions.
 - g. Determine that payments were made timely and properly authorized.
 - h. Review the termination date of each contract to determine that payments are made to active contracted physicians.
4. Summarize audit findings and communicate results to management.
5. Incorporates management's response and plan of action in audit report
6. Establish monitors to ensure recommendations are implemented and functioning as intended.
7. Distribute final audit report to appropriate levels of management.

Re-educate Staff on the Law, Policies and Procedures, Issues Identified in the Audit and Corrective Actions Planned or Taken

Education and re-education is an essential element to ensure compliance and consistent staff performance. Findings in an audit of non-compliance frequently cannot be corrected without a measurable re-education process. Education and re-education should be a continuous process and not a single event.

The above items in Step 4 still apply.

- a. Developing contracts
- b. Contract approvals
- c. Contract requirements
- d. Effectively communicating the terms and conditions of the contract
- e. Properly executing contracts
- f. Timesheet submission and physician payments
- g. Contract expiration and renewal process
- h. How to effectively managing your contracts
- i. Enhancing customer service skills

Again, re-education is essential and the key to maintaining awareness of critical process components. Staff meetings, training sessions, and seminars/conferences are ways to increase your staff's knowledge and understanding of physician contracting services.

The preceding *Seven Component Framework* creates a systematic approach that enables organizations to achieve industry best practice standards in addressing complex compliance issues in a manner that can be useful for hospital management teams, internal auditors and compliance officers. This methodology will be applied to areas such as EMTALA, 72-hour compliance, revenue cycle, inpatient/outpatient/observation services, and HIPAA to provide a comprehensive reference guide developed by AHIA members.

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