COSMOS
Navigate the Compliance Universe

Compliance Today - February 2022
Contract Lifecycle Management: What you don't do will cost you

By Cheryl Gregory, JD, RN, BSN, MNE, LHRM, CPHQ, andMarkes Wilson, MBA, FACHE

Cheryl Gregory (cgregory@berrydunn.com) is Senior Manager, Compliance and Credentialing, and **Markes Wilson** (markes.wilson@berrydunn.com) is Senior Consultant at BerryDunn, Portland, ME. *Wilson is also cofounder and advisor for CLM solution Healthy Contracts, produced by Business Data Applications Inc., Exeter, NH.*

- linkedin.com/in/cgregoryrnjd/
- linkedin.com/in/markes-wilson/

Cheryl Gregory

Markes Wilson

It may be surprising to learn that companies lose more than 9% of their revenue annually to poor contract management.[1] For larger organizations, the percentage quickly climbs to 15%. According to Definitive Healthcare data, the average net patient revenue at US hospitals is $334.5 million,[2] which means most hospital systems are, conservatively speaking, bleeding approximately $30–$50 million each year. Poor contract management also costs organizations in noncompliance. No organization can receive Medicare or Medicaid, or other federal healthcare program payments without a contract in place. Contracts are designed to specifically address adherence to regulations such as Stark Law, Anti-Kickback Statute, and the False Claims Act. Violations reflect nonadherence to both the law and the contractual agreement. Therefore, tighter organizational oversight and accountability of the contract prevents institutions from contributing to the annual billion-dollar fines—$2.2 in fiscal year 2020, as reported by the Department of Justice.[3]

Compliance

Headlines abound with health delivery organizations that, due to undermanaging or mismanaging contracts, find themselves in inadvertent violation of regulatory directives. A healthcare system in the Northwest recently faced allegations of crafting administrative services that were below fair market value (FMV).[4] Regulators argued that the hospital venture reduced expenses and increased profits to provider-investors as a means of inducing referrals. Well-built Contract Lifecycle Management (CLM) programs incorporate preventive measures that would manage FMV data and alert stakeholders proactively.

Financial

Equally detrimental are the financial implications of undermanaging contracts. There are several ways this can cost organizations. A few examples: Clinic A has a “sign it and forget it” approach to contracts for services. Charge or cost creep begins when no processes exist for routine review. When accountability gaps are created, clinics such as this one overpay, with the losses compounding over time.

Academic medical center (AMC) B has a relationship with many state and federal entities. Modified regulations go unmonitored and undetected, and the AMC undercharges the federal entity more than a quarter of a million per year until it realizes a number of years later that it has been leaving money on the table. It is estimated that CLM programs assist in minimizing 80% of payment errors that occur annually in the US.[5] Hospital C performs a legal review of all FMV calculations but neglects to establish a policy around the use of FMV in the contracting process. What results from the lack of formal, centralized standard operating procedures are disparate, disconnected processes that ignore such elements as fringe rates, overhead allocations, and widely varying charging patterns.

Personnel and process strain

The third cost—the strain put on legal, finance, and operations departments—come to light when internal interests are misaligned and sometimes competing instead of collaborating on a contractual relationship. This strain is often exacerbated in organizations without a dedicated CLM function that operates under a more collective, mission-oriented approach.

Barriers to effective contract management

The average hospital has more than 1,200 contracts in its portfolio and activates contract pricing for more than 40,000 new line items every six months.[6] Combined with limited resources, siloed business units, and lack of robust contract training and support, it is easy to see how facilities fall short of effectively managing the contract life cycle—the process from start to finish.

Antiquated approach

To understand how these potentially disastrous combinations persist, it may prove useful to understand how contracts are viewed generally. Traditionally treated as one-and-done tasks, agreements are deftly negotiated, signed, filed away, and often forgotten. Wolters Kluwer describes contract processing as "creation/drafting, negotiation/reviewing, approval, finalisation, renewal/closure."[7] It is therefore no surprise that many organizations simply categorize—and store documents related to those same negotiations—and no longer actively manage the contract until renewal or termination discussions arise.

Many lauded this step-function approach to CLM as a viable solution to the related changes faced by healthcare delivery organizations. And although each of those steps in the system are vital, the system leaves out a most critical first step, or rather the foundation from which to take the first step: that of organizational readiness. Undoubtedly, shared repositories and slick interfaces play a role, but more importantly, organizational readiness means having the infrastructure in place to support contract management. And that infrastructure needs key organizational champions leading the charge with attention and focus.

A classic example of how an antiquated approach fails to address system vulnerabilities is a clinic organization where friction arose, in this instance, between the operations and legal department regarding specifics of processing a unique type of contract. The legal department was frustrated that operations was not following their intake process, and the operations department was frustrated that the legal department built an intake process that did not take into consideration the unique nature and diversity of contracts the operations department needed to execute their service lines.

Even when processes are established, opportunities exist to avoid common pitfalls. Processes are often approached from one department's view and fail to address the collective goals of the organization. A multidisciplinary team approach to process mapping yields maximum benefits to the organization and each stakeholder. Consider also that each stakeholder has a varying degree of familiarity, education, experience, and set of organizational culture beliefs around how a process should look and feel.

Process management involves establishing a multidisciplinary group of stakeholders who, through an established set of standardized operating procedures, identify individual and system goals and execute an agreement upon those goals. The group should create and work within a charter. Too often, a team spends valuable time and effort figuring out what it is supposed to do. Charters facilitate discussions by defining the purpose for which the team comes together, as well as identify constraints, resources, and the general scope and breadth of work required of the team. Clearly delineate who oversees negotiations, approvals, has signing authority, and what role each team member plays. Equally important, consider who contributes to what types of issues. Lastly, determine what tangible and covert operational and procedural ramifications may result from the contract, such as frustration and wasted labor.

Components of an effective CLM

It is unrealistic to expect to effectively manage a process or its outcomes without first investing in the needed resources. It starts with organizational commitment that includes these foundational tenets of CLM: focused investment, buy-in of key stakeholders, and standardized processes and expectations. How these tenets look will vary by organization based upon myriad variables, including revenue, number of beds, locations, type of organization (federally qualified health center, AMC, multi-hospital, Visiting Nurses Association, etc.), and organizational behavior (hierarchy, consensus-driven, etc.).

Appropriately managing contracts begins in the first stage of contract management, during the initiation stage. This stage captures what a challenge it is for stakeholders trying to get the contract in place. This is predominantly due to the number of variables involved in each type of contract and the work to define those variables, making the processes within the initiation stage difficult to standardize.

Operationally, the initiation phase can be thought of as the establishment of a mutually beneficial relationship with the other party. As with any relationship, dedicated key individuals come together with unity of purpose. Usually, it is those individuals in legal, finance, compliance, and operations that manage the initiation phase. This multidisciplinary approach lends itself well to ensuring all vital constituents weigh in on goals, concerns, and expectations.

Consider, too, the value of having other representatives on the contract team, such as risk management, quality, clinical, and compliance constituents. These departments often have internal goals and benchmarks that may be affected by contract terms, consideration, length, or outcomes.

Execution

Execution and pre-execution are the two stages of CLM that yield the most benefit by incorporating efficiency, which are otherwise labor-intensive processes. Leveraging key stakeholders into creating and maintaining a steady feedback loop for future contract renewals and negotiations positions the organization to enjoy consistent, high-quality, and expected outcomes.

As the contract gets executed, stakeholders should aim to specifically articulate the scope of services, remove as much ambiguity as possible, and craft verbiage to ensure capturing both value and priorities. Value and priorities may materialize in the form of tying other seemingly unrelated metrics such as HCAHPS survey results, staffing turnover, operating room turnover times, and cleanliness to contract-related outcomes.

Stakeholders would be wise to not only identify but *quantify* the value propositions within the contract. This means continually monitoring for milestones, compliance and risk issues, and key performance indicators (KPIs). And as the adage goes, “You can’t manage what you can’t measure.” To that end, populating dashboards and scorecards with contract-specific KPIs and other significant related metrics allows the organization to track, trend, and make tangible and positive impacts upon operations.

KPIs can be divided into three basic categories for data aggregation purposes: performance metrics, process metrics, and efficiency metrics. Monitoring these types of metrics identifies areas that need improvement and attention to optimize performance.

Renewal versus termination

Optimally, each contract created has a timeline trigger for making the decision to renew or allow to expire. Contracts that do not have these alert mechanisms are inefficient in that they either end automatically and require work to generate an amendment (usually in "scramble mode" after the contract has terminated and one party notices), or otherwise contracts are created as evergreen. Evergreen contracts are essentially agreements that require no amendment or discussion to continue. Any contract worth engaging in requires consistent monitoring, and organizations should endeavor to minimize the number of evergreen contracts within their portfolio.

Once an agreement has come to an end, gather stakeholders and review the contractual outcomes, comparing them to the original value propositions and expectations. Review the contract team charter to determine whether contractual outcomes met renewal criteria.

Be sure that when setting aside some time after the commencement of the agreement, the team documents the outcomes and any identified shortcomings. Encourage and solicit feedback from all interested parties, even those external to the contract team, and attempt to quantify expected as well as actual costs per contract. Use the data for decision support purposes and document findings, concerns, and issues for future stakeholder consideration. By conducting "postmortem" activities on the completed contract, the organization can begin to build organizational best practices around CLM.

Summary

CLM programs are integral to business success. The right team, working with proper information and insight, will drive successful outcomes. CLM systems, when built and maintained, save time, increase efficiency, drive value, and ensure consistent, expected outcomes.

Takeaways

- Contracts should be treated as a relationship memorialized onto a legal document.
- An organization needs to make a focused investment, get buy-in from key stakeholders, and standardize processes in place to build contracts.
- Establish internal control mechanisms: map out current processes, identify gaps and redundancy, and automate alerts.
- Standardize contracts from their inception: preset language, taxonomy, nomenclature, and cataloging domains.
- Identify key contract value metrics and monitor for these *throughout the life cycle* of the contract; use outcomes to shape future state expectations.

1 "The 10 Critical Pitfalls of Modern Contract Management - Webinar Recording & White Paper," World Commerce & Contracting, March 2, 2016, https://www.worldcc.com/Resources/Content-

Hub/View/ArticleId/7994/The-10-Critical-Pitfalls-of-Modern-Contract-Management-Webinar-Recording-White-Paper.
2 "Revenue Trends at U.S. Hospitals," Definitive Healthcare, accessed December 16, 2021, https://www.definitivehc.com/blog/revenue-trends-at-u.s.-hospitals.
3 Department of Justice, "Justice Department Recovers Over $2.2 Billion from False Claims Act Cases in Fiscal Year 2020," news release, January 14, 2021, https://www.justice.gov/opa/pr/justice-department-recovers-over-22-billion-false-claims-act-cases-fiscal-year-2020.
4 Department of Justice, "Kalispell Regional Healthcare System to Pay $24 Million to Settle False Claims Act Allegations," news release, September 28, 2018, https://www.justice.gov/opa/pr/kalispell-regional-healthcare-system-pay-24-million-settle-false-claims-act-allegations.
5 Cloudely, "7 Ways How Contract Lifecycle Management Helps Your Business," accessed December 16, 2021, https://cloudely.com/7-ways-how-contract-lifecycle-management-helps-your-business/.
6 Frank Benoit and Lee Ann McWhorter, "The Challenges and Opportunities of Contract Price Alignment in Healthcare," AHRMM, accessed December 16, 2021, https://www.ahrmm.org/resource-repository-ahrmm/contract-price-alignment-122214-1.
7 Wolters Kluwer, "Contract Lifecycle Management: the irrefutable need for technology," accessed December 16, 2021, https://landing-legisway.wolterskluwer.com/en-whitepaper-contract-lifecycle-management.