

Report on Medicare Compliance Volume 31, Number 39. October 24, 2022 With Hospital-Physician Compensation a Top Risk, Productivity May Require a Closer Look

By Nina Youngstrom

Generous compensation for highly productive physicians isn't necessarily cause for concern in terms of the fraud and abuse laws, but hospitals and health systems might want to verify their productivity, including the medical necessity of services provided, a compliance officer says.

"You need to make sure the production is high for real," said Michelle Frazier, chief compliance officer at Advocate Aurora Health in Milwaukee. As part of its oversight of physician compensation, the health system uses software to determine whether physicians are outliers compared to other physicians internally and nationally. "We have to look at high-volume providers to make sure it is truly volume based on the medical necessity of services rendered," Frazier said. The compliance reviews also consider whether documentation supports the services for the particular physician and whether they take production credit for collaboration with advanced practice providers in a way that may be noncompliant. "Because all these things translate into risk from a physician compensation perspective given the fact that compensation is based on production in large part right now," they were brought into the compliance plan, Frazier explained.

Physician compensation is at the top of the risk assessment and work plan at Advocate Aurora Health, which has a clinician governance process to help prevent compliance problems in this area, Frazier said Sept. 29 at the American Health Law Association's Fraud and Compliance Forum in Baltimore.^[1] It's a continuing target of whistleblowers and enforcers, added attorney Stacy Gerber Ward, who also spoke at the conference. Health care organizations have settled a number of False Claims Act (FCA) lawsuits based on Stark Law and/or Anti-Kickback Statute (AKS) allegations in the past few years over physician compensation. For example, in 2020, Agnesian HealthCare and Fond du Lac Regional Clinic in Wisconsin agreed to pay \$10 million to settle allegations that physicians were overcompensated.^[2]

Productivity isn't the only kind of compensation that poses a risk. "There are compliance risks associated with whatever model of physician compensation is put in place," Frazier said. When Advocate Aurora Health looks at risks every year, the question for compliance is how to mitigate them. Corporate integrity agreements (CIAs) on the HHS Office of Inspector General (OIG) website are helpful for understanding the government's expectation for compliance programs, Frazier said. For example, the CIA with William Beaumont Hospital in Detroit is useful as a "crosscheck for your own program to make sure you have the basics in place."^[3] The CIA was entered into as part of the hospital's \$84.5 million false claims settlement in 2018 over allegations that deals with eight referring physicians violated the Stark Law and AKS.^[4]

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