COSMOS
Navigate the Compliance Universe

Compliance Today - October 2019
Best practices for compliant, aligned professional services agreements

By Stan Stephen, MHA, Dina Unrath, CPA, CVA, SPHR, and Thomas Johnston, JD

Stan Stephen (stanstephen@sullivancotter.com) is a Principal in the Indianapolis office, **Dina Unrath** (dinaunrath@sullivancotter.com) is a Principal in the Pittsburgh office, and **Thomas Johnston** (tomjohnston@sullivancotter.com) is a Principal in the Minneapolis office of SullivanCotter.

Over the past decade, merger and acquisition (M&A) activity in healthcare has been particularly strong as health systems adapt to the changing healthcare environment. Among the potential unintended consequences of this M&A activity are inefficient, fragmented, and poorly aligned physician services contractual relationships.

When a health system merges with or acquires a hospital or physician group, it can also obtain hundreds, if not thousands, of contracts for both employed and independent providers. Employment arrangements can take precedence in acquisition due diligence as organizations are focused on market growth, access, and service line development. That said, there are frequently numerous professional services agreements (PSAs) in place within large health systems that define the full complement of provider relationships. Provider denotes health professionals who provide healthcare services and includes physicians and other healthcare professionals, such as nurse practitioners, chiropractors, physical therapists, physician assistants, and others offering specialized healthcare services. The initial focus of this discussion centers on physician relationships, which comprise the bulk of PSAs; however, overall provider strategy is a fundamental component in developing best practices.

PSA basics

A professional services agreement (PSA) is a contractual arrangement whereby the one party or parties to the agreement agree to provide professional services in exchange for payment by another party or parties. In a healthcare setting, a PSA is often between a health system or hospital and an individual physician or a group of physicians and may include advanced practice providers. Examples of services that may be addressed within a PSA include:

- Coverage (e.g., emergency department/trauma call, hospital-based inpatient services, consultative services)
- Service line co-management
- Medical administrative services (e.g., physician leadership and medical directorships)
- Committee participation
- Provider recruitment

- Other clinical services, such as interpretations of medical tests

At times, a consequence of an initial focus on employment models is the lack of a timely and disciplined review of these PSAs, which, in turn, may undermine the larger strategy while delaying the realization of potential compliance concerns.

The risks associated with not thoroughly reviewing PSAs can be significant. The PSAs may include noncompliant and/or non-aligned terms that expose the health system to significant regulatory and financial risk. Not reviewing PSAs may also further impede the ability of the organization to achieve its intended clinical, financial, and strategic goals, which are typically the driving factors behind these M&A initiatives.

Worse yet, the financial implications of inadequate PSA oversight can add up quickly in the form of substantial penalties per violation for noncompliance, unnecessary spending on underperforming physicians, and loss of reimbursement resulting from poorly aligned provider and payer incentives. Health systems can incur immediate financial losses, as well, in the form of opportunity costs resulting from inefficiencies.

Understanding the problem

Financial implications can result from several issues commonly associated with PSAs.

First, as health systems grow, they often obtain multiple PSAs that are with different group/physician contractors for the same services for various locations, or multiple agreements with different contractors for the same services, but with different terms. This has the potential to result in unnecessary spending and potentially creates a scenario where you continue to rely upon underperforming groups and physicians.

Second, when there are multiple PSAs for seemingly similar services, they tend to include substantially different compensation rates for similar services. Inconsistent compensation rates that are not internally equitable or externally competitive lead to retention and recruitment concerns and contribute to avoidable financial inefficiencies. Moreover, they can create significant compliance risk, because it creates the perception that one group is favored relative to the other(s), which begs the question why.

Third, performance incentives in PSAs are often not aligned with those of employed physicians or are lacking altogether. Inconsistent and non-aligned incentives create difficulties in meeting organizational and service line goals. In many cases, the impact of poorly aligned incentives also compromises the ability of health systems to develop and execute delivery and payer strategies that meet the challenge of declining reimbursement and movement to a more value-based payer environment.

Fourth, most health systems have focused on employment relationships rather than PSAs. By not including PSAs in the planning, health systems have not approached their physician strategies as a "physician enterprise" and, therefore, have not performed assessments to determine an appropriate complement of employed and PSA physician relationships.

Most significant is the fact that by allowing individual hospitals or service lines to develop distinct PSAs, most health systems lack a centralized contracting authority to review PSAs across the organization. This deficiency leaves organizations vulnerable to noncompliance of federal and state regulatory guidelines for fair market value (FMV) and commercial reasonableness of professional compensation, which can result in significant financial penalties (see sidebar for details).