Helpful Tips for Value Based Payment (VBP) Compliance Programs

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VBP Background
Alternative Payment Model Acceleration

U.S. Health Care Payments in APMs


Commonalities Amongst VBP Programs

- Improving Care
- Care Management
- Improving Health Population
- Reducing per capita costs
- Providers/Health Systems
- Vendors/CBOs

The U.S. Election’s Impact on VBP

Key VBP Fraud and Abuse Laws

- False Claims Act
- Anti-Kickback Statute
- Stark
- Civil Monetary Penalties
  - Gainsharing law
  - Beneficiary inducement

FCA Cases Impacting VBP

- False reports or certifications (e.g., quality, annual compliance and data certifications)
- Incorrect information submitted during the performance year must be corrected before the recertification
- Violations of Stark law, AKS, and CMPL
- Failure to return identified overpayments within 60 days
- Subpar “Quality of Care” cases
Sampling of Other Risks in VBPs

• Data integrity – P4R
• Funds flow
• Data Use Agreements and privacy
• Antitrust
• Tax exempt
• Fee splitting/Corp. practice of medicine
• Intermediary network entities laws
• Insurance/managed care laws
• New value based contracting models

VBP Compliance Nuances

Delivery System Reform Incentive Payment (DSRIP) Program

• Authorized through Medicaid Section 1115 waivers
• New York’s Program
  - Allows the state to reinvest $8 billion in federal savings generated by Medicaid Redesign Team (MRT) reforms
  - Specific goal to achieve 25% reduction in avoidable hospital use over 5 years
  - Projects focus on system transformation, clinical improvement, and population health improvement
  - Prescribed compliance program requirements under NY law
Bundled Payments for Care Improvement

- Comprised of 4 broadly defined models of care that link payments for the multiple services beneficiaries receive during an episode of care
- Places financial and performance accountability on the organization
- BPCI Awardee Agreement Compliance Program Requirements - Section 111.1.2
  - Designated compliance official or individual who is not legal counsel
  - Mechanisms for identifying and addressing compliance problems
  - Method for anonymous reporting to the compliance official
  - Regular compliance training
  - Requirement to report probable violations of law
- Requires annual certification

Accountable Care Organizations (ACOs)

- Why is it called an ACO?
- What is an ACO?
- Commercial ACO vs. Medicare ACO Model?
- What is the Medicare Shared Savings Program?
- Are ACO requirements different from similar government programs?

ACOs Growth

Source: HealthAffairs Blog
MSSP (42 CFR 425.300) v. OIG Compliance Guidance

MSSP – at least the following:
- Designated compliance official who is not legal counsel
- Mechanism for identifying and addressing compliance problems
- Mechanism for reporting suspected problems related to ACO
- Compliance training for affected persons
- Reporting of probable violations of law
- Periodic updates to reflect changes in law and regulations

OIG Compliance Guidance
- Written policies and procedures
- Designated employee vested with the responsibility for the day-to-day operation of the compliance program
- Training and education
- Communication lines
- Auditing
- Consistency in disciplinary mechanisms
- Responding to compliance matters, including corrective action plans and reporting to government agencies

MSSP ACO Compliance Program

- No one size fits all
- Compliance coordination with ACO providers/suppliers
- Integration within a current compliance plan allowed
- Conduct a Compliance Gap Analysis/Assessment Early!
- ACO maintains ultimate responsibility with ACO agreement

Prohibition on Certain Required Referrals and Cost Shifting

- Concerns over overutilization of services for Medicare or other federal health programs with respect to care of individuals who are not assigned to the ACO
- Prohibition of an ACO from conditioning participation in the ACO on referrals of non-ACO business
- Increased scrutiny of claims data to detect patterns of cost shifting, including patterns of shifting drug costs
- Prohibition on limiting or restricting referrals of beneficiaries to ACO participants/providers/suppliers within the same ACO, except in limited circumstances
- Beneficiary retains freedom of choice
Avoidance of At-Risk Patients

- CMS will monitor the assignment of beneficiaries from the prior year to the current year.
- May result in oversight through a corrective action plan or termination.

Patient Notification

- ACO participants to post signs in their facilities indicating participation in the Shared Savings Program.
- ACO participants make available standardized written information developed by CMS to beneficiaries whom they serve.
- Required in setting in which beneficiaries are receiving primary care services.
- Not required to notify beneficiaries in the event that it terminates participation in the MSSP.

Beneficiary Inducements

- In general, the ACO prohibited from providing gifts, cash, or other remuneration as inducements for receiving services or remaining in an ACO or with a particular provider within the ACO.
- Flexibility to offer beneficiary inducements for healthy behavior.
- Must be a reasonable connection between the item or services and the medical care of the beneficiary.
- Covers free or below FMV items or services (not cash or cost-sharing waivers):
  - Blood pressure cuff for a patient with a history of high blood pressure so that the patient can provide ongoing self-monitoring.
- The items or services are in-kind and either are preventative care items or services to advance one or more of the prescribed clinical goals.
Marketing Materials

- Include those materials and activities used to educate, select, notify, or contact Medicare beneficiaries or providers and suppliers regarding the Shared Savings Program
- ACOs may use marketing materials 5 days after filing them with CMS if the organization certifies that the marketing materials comply with all marketing requirements
- ACO must use template language where available
- Materials must be provided in “plain” language
- Materials may not be used in a discriminatory manner or for discriminatory purpose, and must not be inaccurate or misleading
- Applies to social media and websites

Documentation Check List

- Documentation of waiver compliance
- Organizational charts
- Background checks
- Compliance training
- Minutes and agendas of committee/leadership meetings
- Provider/supplier lists including removals
- Updated policies and procedures
- TIN/NPI lists
- Conflict of interest reviews and disclosure statements

Documentation Check List (cont.)

- Shared savings/loss distribution methodologies and changes
- Approved marketing materials/CMS submissions
- ACO website updates
- Copies of all provider/supplier agreements
- Root cause analysis to address identified compliance issues (CMS likes data)
- Corrective action plans including disciplinary documentation
- Beneficiary forms and signs (e.g., data opt-out, beneficiary notification requirement)
- Evidence of a culture of compliance (e.g., posters, compliance week, email alerts)
Waiver Protections

- ACO Waivers
  - Pre-participation v. Participation
  - Waiver – Stark and AKS
  - Patient Incentive Waiver
  - Self executing but prescriptive requirements to execute
- DSRIP
  - Certificate of Public Advantage (COPA)
  - Application process
- Limitations
  - Will not cover all arrangements (e.g., commercial business)
  - Will not cover activities that are not necessary to carry out the program

Leveraging your current Compliance Program to meet VBP requirements

What are the Compliance Program Requirements?

- Compliance Officer
- Elements – prescribed v. best practice
- Self reporting
- Federal v. state regulations
Organizational Structure

- What kind of organization is involved in VBP programs?
  - Existing organization with Compliance Program
  - New entity under a parent organization
  - Consortium
- Who is the governing body?
  - Regulatory requirements (e.g., ACO governance)
  - Audit/Compliance Committees?
- Who is involved in the VBP program?
  - Employed v. community physicians
  - Internal and external resources

Compliance Official

- May use existing resources
- Regulatory requirements?
  - ACO requirements
    - Legal counsel and compliance officer must be different people
    - Must report directly to ACO’s governing body
  - DSRIP
    - Compliance Officer must be an employee of the PPS Lead and report directly to the PPS’s chief executive or other senior administrator and periodically report directly to the governing body
  - May not be legal counsel
  - BPCI
  - May not be legal counsel

Policies & Procedures

- Code of Ethical Conduct
- Utilizing current policies
- Distributing/Publishing
Reporting Mechanisms

- Existing reporting mechanisms
  - Helpline
  - Web-based
- Partnering with providers/suppliers’ existing compliance programs
- Issues impacting one portion of an organization may also impact the participation in the VBPs

Compliance Training

- Incorporate into current compliance training
- Computer-based training
  - Access
  - Flexibility
- Live training
  - Labor intensive
  - ROI
- Self learning
  - Attestations
- Governing body

HIPAA, Data Sharing and Data Use Agreements

- Covered Entity or Business Associate?
  - BAA
- State laws regarding protections for special categories of health information (e.g., mental health, substance abuse, HIV)
- Sharing of data amongst partners?
- Data Use Agreement
  - Who can request data?
  - What are the purposes for the data?
  - Minimum necessary
  - Data destruction
Engaging participants in the VBP Compliance Program

Who is your Audience?

- Board of Directors
- Employees
- Internal and external participants
- Community-Based Organizations

Leveraging Partners

- Who are your partners?
  - Health systems
  - Physician practice groups
  - IPAs
- What resources do these partners have to support your compliance program?
- How can you engage these partners to spread the word?
- Participation Agreements
Thank You

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