Bringing Managed Care Under the Compliance Umbrella

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Overview

- Growing importance of close coordination between compliance and managed care staff
- Areas of concern for contracting and contract compliance
- Contract management tips

Increased Focus on Compliance through Managed Care

- Expansion of affirmative false claims to encompass claims to contractors
- Increased scrutiny on plans for risk adjustment and other issues
- Increased compliance plan requirements on government contractors, especially Medicare Advantage plans and Medicaid managed care plans
- Increased delegation of fraud and abuse authority from governmental agencies to plans

Areas of Risk From Managed Care Non-Compliance

- Governmental Programs
  - State and Federal False Claims Acts
    - Direct claims to plans
    - Indirect claims (submission of false information to plans, resulting in increased payments to plans from government)
    - Reverse false claims?
- All payors
  - Contractual remedies
  - Penal Code 550 (criminal statute)
    - E.g., unlawful to knowingly present or cause to be presented any false or fraudulent claim, etc.
  - Insurance Code section 1871.7 (civil statute)
    - Permits "qui tam" like cases on the behalf of the state

Compliance Risks in Managed Care Contracts at a Glance

- Obligations
- Representations
- Credentialing/accreditation
- Access
- Utilization management
- Quality standards
- Patient records, privacy, maintenance
- Access to records, audits, inspections
- Affirmative reporting

Don't Forget about the Other "Parts" of Your Contract!

- Documents Attached to the Agreement
  - Exhibits and Attachments
  - May include separate agreements for each selected service line – often comprehensive regulatory exhibits
- Documents Incorporated into the Agreement by Reference
  - Full fee schedule
  - Provider manual

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Managed Care Contracting and Compliance Areas

- Governing law
  - Does it actually only encompass law? Or does it give non-laws the force and effect of law through contract?
  - Regulatory addenda: is it actually consistent?
    - Provider v. plan responsibilities

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Contractual Obligations

- Claims Submissions
    - Billing format
- Encounter Data Submissions
- Copays/deductibles
- Establishment of Policies and Procedures
- Provider Training
- Binding of Downstream Providers
- Compliance Training (Medicare)
- Subcontracts

Representations

- Contractual certifications
  - Licensure
  - Enrollment
  - Accreditation
- Excluded providers
- Impact of false representations?
  - What about when the contract is known to be false upon execution?
  - Ongoing representation provisions

Credentialing/Enrollment

- What level of enrollment is sufficient?
  - Rendering providers or ordering, referring or prescribing?
  - Source of a lot of confusion among the plans right now
    - CA Department of Health Care Services giving plans the option of enrolling providers in fee-for-service
    - Medicare Advantage also requires enrollment in Medicare fee-for-service to participate in-network
- What level of provider needs to be credentialed?
  - Status with plan until credentialing is approved?
  - Delays in credentialing affecting onboarding of new providers

Access

- Plans subject to network adequacy/timely access requirements
- Whether timely access requirements apply directly to providers
- Anti-discrimination requirements
  - May vary from plan to plan

Utilization Management

- Requirements for referrals/authorizations
- Increasingly provisions putting providers at risk for out of network referrals
- Sometimes limited remedies for adverse UM decisions

Quality Standards

- National Committee for Quality Assurance/Healthcare Effectiveness Data and Information Set reporting
  - Incentives for meeting quality metrics
- Care coordination/cooperation
- Discharge planning
- Participation in plan quality improvement programs
- Corrective action plans resulting from quality issues that arise

Patient Records, Privacy and Maintenance

- Creation of medical records
  - Content
- Record maintenance
- Privacy
  - Trade secret provisions
- Retention period
  - Significant variations between contracts

Access to Records, Audits and Inspections

- Required under federal law for Medicare and Medi-Cal
- Coordination with compliance programs for follow up on managed care audits

Affirmative Reporting

- Overpayments
- Fraud/abuse
- Licensure actions
- Malpractice actions/settlements
- Investigations

Coordination between Managed Care Staff and Compliance

- Contracting
- Maintenance of contracts/amendments/manuals
- Incorporation of requirements
  - Physician contracts/subcontracts
  - Policies and procedures
- Coordination for audits
- Coordination upon identification of unusual occurrences

Questions?

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