

Compliance and Risks Related to the Hospital Readmissions Reduction Program

SUMMARY: Acute-care hospitals have developed processes and procedures to prevent readmissions and avoid penalties under the Hospital Readmissions Reduction Program. Paradoxically, operational best practices may also be compliance risks. Three areas of concern are (1) discharge planning, (2) managing post discharge care and (3) readmission procedures. A robust compliance review and monitoring can be effective ways to mitigate the risk of False Claims Act (FCA) liability.

I. Background

The Hospital Readmissions Reduction Program requires Centers for Medicare & Medicaid Services (CMS) to reduce payments to IPPS hospitals with excess readmissions. A “readmission” occurs when a patient is discharged from an IPPS hospital to a non acute setting and then is readmitted to the same or another hospital within 30 days. CMS continues to expand the list of conditions subject to penalty, most recently proposing its preferred methodology for penalizing Coronary Artery Bypass Graft Surgery readmissions in the FY 2017 IPPS proposed rule.

II. CMS Uses Penalties to Drive Change

CMS penalizes readmissions by reducing prospective diagnosis-related group (DRG) payments based upon the number of readmissions above national average readmission rates for specified conditions. CMS began levying penalties on October 1, 2012. In fiscal year 2015, 2,610 hospitals were penalized, with 39 hospitals receiving the maximum 3 percent penalty.

III. Providers Have Adopted Practices and Procedures to Reduce Readmissions

Acute-care hospitals have developed processes and procedures to prevent readmissions, including scheduling and arranging transportation for post discharge appointments; performing medication reconciliations and delivering medications; partnering with community physicians, physician groups and local hospitals; participating in incentive plans with payors; and establishing new intake standards and procedures.

IV. Operational Best Practices May Be Compliance Risks

Hospitals face the challenge of avoiding fraud and abuse allegations while also trying to avoid unnecessary readmissions. Risks include suits under the FCA based on allegations of patient inducement, patient steering, corruption of medical decision making, unfair competition, and violations of the Emergency Medical Treatment and Active Labor Act (EMTALA). There are three main areas of concern:

- Providing discharge planning in the form of scheduling appointments, delivering medications and helping patients plan transportation could be viewed as the illegal provision of referral sources and/or be viewed as the provision of a valuable service without cost. These arrangements could raise concerns under the Anti-Kickback Statute and Civil Monetary Penalties Law.
- Entering into collaborative arrangements with physicians or incentive programs with payors could be viewed as the illegal provision of referral sources and corruption of medical decision making. These arrangements could also raise concerns under the Anti-Kickback Statute and Civil Monetary Penalties Law.
- Establishing intake procedures that process new and readmitted patients differently could be viewed as a corruption of medical decision making and violation of EMTALA.

CONCLUSION: With only limited guidance from HHS-OIG on these issues, a robust compliance review and monitoring can be effective ways to mitigate FCA risk.