Practice Leadership Conference

Practice, Politics & Policy

Show Me the Money! Financial Considerations in Innovative Practice Models
DIFFERENT TYPES OF ALTERNATIVE PRACTICE MODELS

• Co-Location
• Management Services Organization (MSO)
• Merger
Co-Location

- Rent or Share Office With Possible Referral Sources
- Limited Risks
- No Integration
MANAGEMENT SERVICES ORGANIZATION (MSO)

- Independent Practice Affiliates
- Competing with Provider Groups/Managed Care Messenger Model
- Antitrust Compliance
- Clinical Integration
- Use of Common Name for Services Provided
- Credentialing
- Marketing
- Increased Legal Risk
Regulatory Risks

- Corporate Practice of Medicine
- Fee Splitting
- Fraud and Abuse
  - Federal
  - State
Regulatory Risks

- Self-Referral
  Federal ("Stark Law")
  State
- Antitrust
  Sharing of Financial Information
  Integration
CORPORATE PRACTICE OF MEDICINE

• General Business Entities May Not Practice Psychology Defined As:
  “The practice of psychology is defined as rendering or offering to render to individuals, groups, organizations, or the public any psychological service involving the application of psychological principles, methods, and procedures of understanding, predicting, and influencing behavior, such as the principles pertaining to learning, perception, motivation, emotions, and interpersonal relationships; and the methods and procedures of interviewing, counseling, psychotherapy, behavior modification, and hypnosis; and of constructing, administering, and interpreting tests of mental abilities, aptitudes, interests, attitudes, personality characteristics, emotions and motivations.” California Business and Professions Code § 2903.

Similar Provisions in Other States.
Expanding the Practice Spectrum

- Practical Aspects on the Prohibition on the Corporate Practice
  - Ownership of a Practice is limited to licensed professional
  - Ownership of a provider’s practice by lay persons is prohibited
  - Ownership of a provider’s practice by a general business corporation is prohibited
  - Certain exceptions apply for ownership by hospitals and HMOs
- Management Agreements
  - Professional decision making must be left to provider
  - Advertising of professional services can only be done by provider
  - Determination of how many patients to see in a given period of time cannot be decided by an unlicensed person
  - Determination of what tests are appropriate for a particular condition can only be done by provider
Expanding the Practice Spectrum

• Violation of the Prohibition on Corporate Practice of Medicine
  • Can be a Felony
  • Fines
  • Prison
  • Licensure Action taken against provider
  • Can also pursue anyone who aids and abets the violation
Expanding the Practice Spectrum

- The “Friendly PC” Model
  - A professional corporation is formed by a provider associated with the management company
  - A Stock Transfer Agreement is entered into between the management company and the provider
  - The Stock Transfer Agreement allows the management company to designate the owner of the stock of the professional corporation
Who are the “Fraud Busters”

- Department of Justice – both U.S. Attorneys and FBI
- DHHS (OIG and CMS)
- Other Federal and State Agencies (e.g., state OMIGs & MFCUs)
- Private Third Party Payors
- Private Citizens (e.g., customers & competitors)
Overview of Anti-Kickback Statute (AKS)

42 U.S.C. § 1320a-7b(b)

• Prohibits the offering, paying, soliciting or receiving any remuneration in return for
  – Business for which payment may be made under a federal health care program; or
  – Inducing purchases, leases, orders or arranging for any good or service or item paid for by a federal health care program

• Remuneration includes kickbacks, bribes and rebates, case or in kind, direct or indirect
The AKS

- The “one purpose” rule (United States v. Greber, 760 F.2d 68 (3d Cir.), cert. denied, 474 U.S. 988 (1985))
- “We conclude that the more expansive reading is consistent with the impetus for the 1977 amendments and therefore hold that the district court correctly instructed the jury. If the payments were intended to induce the physician to use Cardio-Med’s services, the statute was violated, even if the payments were also intended to compensate for professional services.”
Penalties

- Criminal and Civil Penalties
- $25,000 per offense
- Knowing violation can result in CMP liability of up to $15,000 per violation plus 3 times claims and/or $100,000 per circumvention scheme
- Exclusion from Federal Programs
AKS: Regulatory Geometry

• Intent based
  – Do not have to intend to violate the statute
  – Do not have to have actual knowledge of the statute
• Statutory Exceptions and Safe Harbors
• Violation of AKS constitutes a “false or fraudulent” claim under the False Claims Act
Statutory Exceptions

1. Discount Exception
2. Employee Exception
3. Group Purchasing Organization
4. Waivers of Certain Co-Payments
5. Risk Sharing Arrangements
6. Safe Harbors
7. Waivers of Part D Cost Sharing
8. FQHC’s
9. Electronic Prescribing
Safe Harbors

1. Investment Interests
2. Space Rental
3. Equipment Rental
4. Personal Services and Management Contracts
5. Sale of a Practice
6. Referral Services
7. Warranties
8. Discounts
9. Employees
10. GPOs
11. Waiver of Beneficiary Coinsurance and Deductible Amounts
Safe Harbors cont.

12. Managed Care
13. Practitioner Recruitment
14. Obstetrical Malpractice Insurance Subsidies
15. Cooperative Hospital Services Organization
16. Ambulatory Surgical Centers
17. Ambulance Replenishing
18. Electronic Health Records and Community Information Systems
19. Accountable Care Organizations and OIG’s Waiver Authority
Significance of Safe Harbors

- Failure to comply with a safe harbor can mean one of three things:
  - Arrangement does not fall within ambit of the statute;
  - Arrangement is obviously abusive, constitutes a clear statutory violation, and is very likely to be prosecuted;
  - Arrangement involves risk because it “may violate the statute in a less serious manner...”
The Stark Law

42 U.S.C. § 1395nn

“...If a **physician** (or an immediate family member of such physician) has a **financial relationship** with an entity . . . , **then** the physician may not make a referral to the entity for the furnishing of **designated health services** for which payment otherwise may be made” under Medicare
Designated Health Services

- Clinical Laboratory Services
- Physical Therapy Services
- Occupational Therapy Services
- Radiology Services, including MRI, CT Scan, PET, Ultrasounds
- Nuclear Medicine
- Radiation Therapy Services and Supplies
- Durable Medical Equipment and Supplies
- Parenteral and Enteral Nutrients, Equipment and Supplies
- Prosthetics, Orthotics, Prosthetic Devices, and Supplies
- Home Health Services
- Outpatient Prescription Drugs
- Inpatient and Outpatient Hospital Services
Penalties

• Automatic overpayment or disallowance
  – Strict Liability
  – DHS entity, not referring physician
• Knowing violation can result in CMP liability of up to $15,000 per violation plus 3 times claims and/or $100,000 per circumvention scheme
• Exclusion from Federal Programs
Stark Law: Regulatory Geometry

- Strict Liability/No Intent
- Mechanical: “If...then...” similar to geometric theorems
- Elevates form over substance
Form Over Substance

- Kickback focuses on facts, circumstances, FMV and intent of parties
- Stark focuses on meeting standards such as writings, valuation, timing, geographic indications, rural verses urban, location of buildings, contiguous zip codes, repayment terms, holdover clauses, per click services, level of supervision, how and when bonuses can be paid and for what, direct verses indirect financial relationships, ownership verses compensation, full time verses part time employment, financial relationship with family members, tracking every time a hospital gives a cheeseburger to a referring MD...
4. Exceptions: Three Types

(1) General exceptions from the scope of the Stark prohibition

(2) Exceptions relating only to ownership or investment interests

(3) Exceptions relating only to compensation arrangements
General Exceptions

1. In-Office Ancillary Services
2. Academic Medical Centers (AMC)
3. Physicians’ Services
4. Prepaid Plans- Services Furnished by an Organization to Enrollees
5. Implants Furnished by an ASC
6. EPO and Other Dialysis-Related Drugs . . .
7. Screening, Immunizations, and Vaccines
8. Eyeglasses and Contact Lenses
9. Intra-family Rural Referrals
Ownership/Investment Exceptions

1. Ownership Interest in the Whole Hospital
2. Publicly-Traded Securities
3. Mutual Funds
4. Specific Providers
   1. Puerto Rico
   2. Rural Providers
   3. Whole Hospital
Compensation Exceptions

1. *Bona Fide* Employment Arrangement
2. Rental of Office Space
3. Rental of Equipment
4. Personal Services Arrangement
5. Physician Recruitment
6. Isolated Transactions
7. Items or Services
8. Compensation Unrelated to DHS
9. Certain Arrangements with Hospitals
10. Group Practice Arrangements with Hospitals
Stark: Practical Considerations

- Exception driven
- Intent is irrelevant
- Stark regulates physician contracting
- Guidance and regulations often change
- Smaller scope than anti-kickback but much more difficult to navigate from compliance perspective
- Highly criticized law
# Stark vs. AKS

<table>
<thead>
<tr>
<th>Stark Law</th>
<th>AKS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regulated by CMS</td>
<td>Regulated by OIG</td>
</tr>
<tr>
<td>Prohibits referrals where a financial relationship exists</td>
<td>Prohibits payments intended to induce referrals</td>
</tr>
<tr>
<td>Civil penalties only</td>
<td>Criminal + Civil penalties</td>
</tr>
<tr>
<td>Strict Liability</td>
<td>“Intent”</td>
</tr>
<tr>
<td>Applies only to physicians</td>
<td>Applies to anyone who attempts, accepts or gives kickbacks</td>
</tr>
<tr>
<td>Mandatory Exceptions</td>
<td>“Voluntary” Safe Harbors</td>
</tr>
</tbody>
</table>
Issue Spotting

• Follow the $$$ - diagram referrals and transfers of value
• What is not in writing? What is missing?
• Understand the reimbursement landscape (e.g., who is responsible for what?)
• Understand the “deal”
• If the deal is “too good”, then it probably is (i.e., is the referral source getting a windfall)
• Can you cure the potential issue?
Member of the Firm

Kevin Ryan

312-499-1421
kryan@ebglaw.com
How an MSO can Help you Be Independent and Have Enough Dollars to Pay the Bills

Kevin D. Arnold, PhD, ABPP
Owner and President
Center for Cognitive and Behavioral Therapy &
The Assoc. of Practices for Evidenced Based CBT (APEB)
Columbus, OH
www.ccbtcholumbus.com
kda1757@gmail.com
Clinical Faculty, Ohio State University Dept. of Psychiatry and Behavioral Health
One MSO Model

- CCBT is an MSO, but “self-contained”
- APEB (not yet launched) is an MSO, not self-contained
- Following “NUTS AND BOLTS” are various options that could vary across practice settings
  - Small or Solo Practice
  - Hospital Based Contractor
  - PCP Co-Located
How to Get Patients in the Door

- Advertising and Marketing: Google, Google Analytics, Adwords, Psychology Today, Direct Mail, Brand Identity
- Intake Processing: Organizing Intakes, Prioritizing or not, Streamlined Intake Data Collection, Managing Intake Source Data for Marketing and Advertising
- 420 Intakes in January 2017
How to be Sure You Can Get Paid

- **Credentialing**
  - NPI/CAQH
  - Relationship with Provider Relations
  - Group Contracts and Access to Expedited Credentialing

- **Benefits Verification**
  - Recognizing a Carve Out
  - EAP or not to EAP
  - Deductibles, Co-Insurance, or Co-Pays
  - Calls vs. Online Verification
  - Determination of Provider Status on Specific Product
Billing Processing: How to Get Paid When You Can Get Paid

• Billing System
  • Not Claims Processing
  • Billing per Provider per Day (Superbills, Drop-Down Billing, File Transmission)
  • Paper Claims
  • EAP Billing—Every Pond has its Own Duck

• Claims Processing
  • Billing File goes to Clearing House
  • What are Edits?
  • When the Clearinghouse Denies (General Edits/Specific to Carrier)
  • When the Payer Denies
  • Working Denied Claims (In the Billing System or In the Clearinghouse)
<table>
<thead>
<tr>
<th>Batch</th>
<th>LOB</th>
<th>Alvo Total</th>
<th>Acc</th>
<th>Rej</th>
<th>Payer Reports Total</th>
<th>Acc</th>
<th>Rej</th>
<th>Remits Total</th>
<th>Proc</th>
<th>Den</th>
<th>Total</th>
<th>Complete</th>
</tr>
</thead>
<tbody>
<tr>
<td>cgt0224.1</td>
<td>$14,940.00</td>
<td>P</td>
<td>95</td>
<td>94</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>cgt0223.1</td>
<td>$9,570.00</td>
<td>P</td>
<td>65</td>
<td>64</td>
<td>1</td>
<td>39</td>
<td>39</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>cgt0222.1</td>
<td>$5,750.00</td>
<td>P</td>
<td>38</td>
<td>37</td>
<td>1</td>
<td>36</td>
<td>36</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
<tr>
<td>cgt0221.1</td>
<td>$11,150.00</td>
<td>P</td>
<td>76</td>
<td>76</td>
<td>0</td>
<td>73</td>
<td>73</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>cgt0217.1</td>
<td>$12,785.00</td>
<td>P</td>
<td>89</td>
<td>87</td>
<td>2</td>
<td>81</td>
<td>79</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>cgt0217.1</td>
<td>$120.00</td>
<td>P</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>cgt0216.1</td>
<td>$15,370.00</td>
<td>P</td>
<td>100</td>
<td>98</td>
<td>2</td>
<td>87</td>
<td>76</td>
<td>11</td>
<td>0</td>
<td>0</td>
<td>13</td>
<td>1</td>
</tr>
<tr>
<td>cgt0215.2</td>
<td>$190.00</td>
<td>P</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>cgt0215.1</td>
<td>$12,795.00</td>
<td>P</td>
<td>91</td>
<td>87</td>
<td>4</td>
<td>78</td>
<td>76</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>cgt0215.1</td>
<td>$160.00</td>
<td>P</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>cgt0214.1</td>
<td>$6,040.00</td>
<td>P</td>
<td>45</td>
<td>45</td>
<td>0</td>
<td>43</td>
<td>43</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>cgt0213.4</td>
<td>$3,980.00</td>
<td>P</td>
<td>26</td>
<td>26</td>
<td>0</td>
<td>25</td>
<td>25</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>cgt0213.1</td>
<td>$2,340.00</td>
<td>P</td>
<td>19</td>
<td>19</td>
<td>0</td>
<td>16</td>
<td>16</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>cgt0213.2</td>
<td>$3,480.00</td>
<td>P</td>
<td>23</td>
<td>22</td>
<td>1</td>
<td>20</td>
<td>20</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>cgt0213.3</td>
<td>$240.00</td>
<td>P</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>cgt0210.1</td>
<td>$14,700.00</td>
<td>P</td>
<td>94</td>
<td>94</td>
<td>0</td>
<td>86</td>
<td>83</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>cgt0208.1</td>
<td>$6,440.00</td>
<td>P</td>
<td>45</td>
<td>45</td>
<td>0</td>
<td>40</td>
<td>40</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>cgt0207.1</td>
<td>$8,470.00</td>
<td>P</td>
<td>59</td>
<td>59</td>
<td>0</td>
<td>58</td>
<td>56</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>cgt0206.1</td>
<td>$5,510.00</td>
<td>P</td>
<td>39</td>
<td>39</td>
<td>0</td>
<td>38</td>
<td>38</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>cgt0203.2</td>
<td>$9,140.00</td>
<td>P</td>
<td>61</td>
<td>61</td>
<td>0</td>
<td>58</td>
<td>57</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
</tr>
</tbody>
</table>
(A7:26:82) Rejected - Invalid Information: Rendering Provider not found.
(A7:107) Rejected - Invalid Information: Processed according to contract provisions
(Contract refers to provisions that exist between the Health Plan and a Provider of Health Care Services)
(A7:26:82) Rejected - Invalid Information: Rendering Provider not found.
Billing Processing: How to Get Paid When You Can Get Paid

• Working Denials
  • Having a Relationship inside the Carrier
  • Partner with Carrier—Errors are not Intent
  • Is there a Prompt Pay Law? Find out!!
  • Standard Denial Appeal Letter
    Fax Only!!!!
  • Complaints to Insurance Department Only When Necessary
Why an MSO for Solo or Small Practice

✓ MSO is not a Billing Company, It is One of Us Working for Your Success
✓ Strive to Make a Living without Opportunity Costs
  • Marketing/Branding (Shared or Unique)
  • Intake Processing
  • Benefits Verification
  • Scheduling
  • Billing
  • Claims Management
  • Larger Provider Bundling to Create Value for Carriers
  • Data Management
Why an MSO for ..... 

• Hospital Based Contractor
  • Need for Billing, Claims Processing, EHR that meets Meaningful Use Requirements (Interoperable), Credentialing, Scheduling
  Less or Not Needed

• PCP Co-Located
  • Need for Billing, EHR that meets Meaningful Use Requirements (Interoperable), Credentialing, Scheduling, Claims Processing

• PCP Integrated (PMPM)
  • EHR that meets Meaningful Use Requirements (Interoperable), Credentialing, Scheduling
Other Issues for a Soon, but Other, Day

- Integrating Behavioral Health for PMPM
- Creating Value through Reduced Healthcare Costs
  - Patient Wellness, Patient Maintenance, Prevention
- Value Based Contracts
  - Metrics from the Carrier
  - Completely Different Concepts of Outcomes (i.e., not a BDI and a cloud of dust)
Integrated Behavioral Health Models for Independent Psychologists: Getting Paid!

Robin McLeod, PhD, Licensed Psychologist
Immediate Past President, MN Psychological Association
Presented at the Practice Leadership Conference, March 6, 2017
Our Goal:

• To create a model for independent psychologists

• To work in integrated medical settings

• In a financially self-sustainable model
Three models for financial compensation in integrated care settings:

- Grant-based models
- Large health system models
- Independent practice models
Our Independent Practice Model

- One behavioral health provider in clinic each day
- All BH providers are independent business owners
- Medical clinic staff provides support
One behavioral health provider in clinic each day:

- 3 psychologists
- 1 certified nurse practitioner (Rxp)
- Adding psychiatrist and social worker by Fall, 2017
All BH providers are independent business owners:

• Provide their own intake paperwork

• Maintain their own EHR

• Complete billing separately from the medical clinic
Medical clinic staff provides support:

• Office space and furnishings
• One designated admin staff as point of contact
• Scheduling and reminder calls for appointments
• Uploads summary of visit into confidential section of clinic EHR
• Integrated care coordinator who assists in follow through with referrals to specialty care services
Necessary training for integration

- Didactic Courses (CE events; APA convention, etc.)
- Formal training (U of MA certificate in Primary Care Behavioral Health)
- Practice experience with consultation
Obstacles to overcome:

- Uncompensated time
- Teaching MD’s what we do and what we CAN do
- Being in-network with all insurance plans
Robin McLeod, PhD, Licensed Psychologist

Counseling Psychologists of Woodbury, P.A.
7582 Currell Blvd., Ste. 208, Woodbury, MN 55125
(651) 739-7539
http://www.cpwmn.com
mcleod@cpwmn.com