Managing Regulatory Change as a Freestanding Emergency Center

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Managing Regulatory Change as a FEC

• The session will:

  • Provide relevant information regarding licensure, accreditation, regulatory and operational issues that will confront the FEC as a relatively new member of the national health care delivery line-up.

  • Provide a snapshot of facility licensure and regulation nationally.

  • Address advantages and disadvantages of Medicare certification status and how this affects their future relationships with health plans and health systems.

  • Discuss compliance with certain federal laws such as EMTALA and the continued need for states to better understand the industry so they can fairly regulate it, such as the recent Texas law on patient disclosure of fees.
Licensure, Accreditation, Regulatory and Operational Issues

• Legislation to establish freestanding ER facility ("FSER") licensure in Texas was passed in 2009 (81st Session)
• In order to qualify for licensure and facility payment as a FSER, a facility has to be open 24/7
• Because FSERs are not recognized by Medicare/CMS as eligible for credentialing under Medicare Conditions of Coverage, facilities may not bill the Medicare program for facility fees
• The current CPT code for emergency departments (99281-99285) limits coverage to “place of service” code 23 (hospital-based facility). This leaves open the proper coding for facility claims as distinguished from physician claims.
• The ambiguity in coding and reimbursement for the more expensive FSER operating costs resulted in the inclusion of specific language in the 2009 legislation to require health plans to reimburse FSERs open 24/7.
• Some FSERs are obtaining JCAHO accreditation as an ambulatory care facility
National Licensure Trends regarding Freestanding Emergency Centers

Regulatory Climate runs from hot to cold -

• Unregulated
• Regulated
• Indirectly Prohibited
• Directly Prohibited

States’ interest in FSERs also runs from “welcoming” to “rejecting”

• Some states are openly soliciting formation of FSERs
• Some states directly prohibit their entrance into the market
Medicare Certification

• Advantages:
  • Further legitimizes FSERs as a provider category (e.g. ASCs); eliminating ambiguity with payors; establishes payor obligations for coverage of emergency services
  • Reduces barriers to entry for health network participation (ACOs, etc);
  • Enables access to broader paying patient population under health care reform (e.g. Exchanges);
  • Regulatory requirements will further standardize the industry while improving quality

• Disadvantages:
  • Adds compliance with federal regulations based on Conditions of Coverage;
  • Increases federal scrutiny of operations;
  • Impacts setting chargemaster/fee schedule;
  • May impact how and by whom entities can be owned and operated.
Laws Affecting FSERs

- PPACA
- EMTALA
- Antitrust
- Facility Licensing
- Anti-Kickback and Commercial Bribery (Texas law)
- HIPAA/HITECH/State Privacy
- OSHA
- EEOC
- FLSA (wage & hour)
- Deceptive Trade Practices
- Financial Disclosure Requirements (New)
Hot Topics For 2015

• Pilot study in Mississippi and implications for the industry
• Texas legislation regarding patient disclosure and anticipated future reforms
• In vs out-of-network billing issues
• Market changes
• Medicare credentialing and payor issues
• FSER role in provider integration and ACO network participation
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