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Client Alert: What Do Your Third-Party Payor Agreements Actually Require?

How in-depth has your entity reviewed its third-party payor agreements? Have your billing team, Compliance Officer, Privacy Officer, and Legal team all been made aware of requirements or, better yet, were they involved in the agreements' approval? Navigating the "fine print" in payor agreements can be the difference between a smooth operation and a compliance nightmare. Here are five critical areas where providers often get tripped up—and what you should be asking your team right now.

Breach Notification Requirements

Some provider agreements require that entities notify the payor within 24 hours of a Health Insurance Portability and Accountability Act (HIPAA) breach. While often unrealistic, it's a standard clause that frequently lacks clarity as to whether an unsuccessful security penetration attempt must be reported.

The Checkup: Have you determined what your reporting requirements are? Have you implemented a process to meet those requirements?

Change of Ownership or Control

Thinking of restructuring? Don't move too fast. Some provider contracts require that, at a minimum, the provider give the payor notice of ownership and/or leadership changes. Others require that the provider seek approval from the payor prior to certain structural changes. The thresholds and conditions for notice and/or approval vary by contract.

The Checkup: Do you know if your contract requires a simple notice or a formal green light before you sign that next deal?

Settlement, Overpayment, and Adverse Action Reporting

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RELATED PROFESSIONALS

Grant P. Dearborn
Virginia "Ginny" Dailey
Daphne L. Kackloudis
Mara J. Rendina

MEDIA CONTACT

Wendy M. Byrne
wbyrne@shumaker.com

Payors generally expect to be kept in the loop when things go wrong; that includes settlements, overpayments, and other adverse actions. However, providers are not always aware of their reporting requirements regarding settlements or overpayments. Most provider agreements require that provider entities notify payors when the provider entity or one of its staff have entered a settlement (including medical malpractice or an overpayment) or had an adverse action taken by a regulating body, such as a licensing board, certification body, or payor (including Medicare and Medicaid).

The Checkup: You can't report what you don't know. Do your internal staff policies explicitly require employees to notify you the moment litigation or an adverse action begins?

Compliance Program Requirements

Most payor agreements require that provider entities have an "effective" Compliance Program, but payors are notoriously vague about what "effective" actually means.

The Checkup: Does your entity have the basics—a Compliance Officer, a Code of Conduct, and a clear reporting channel? If you haven't reviewed the OIG's General Compliance Program Guidance, now is the time.

Culturally Competent Care

Beyond the legal requirements for interpreters, many contracts include specific "cultural competence" standards, including recognition of cultural barriers for patients and other communications competencies. Regardless of the broader policy debate, providers should be aware of their specific contractual commitments. Communication with patients is obviously an important component of effective health care. Your entity may be required to provide interpreters by law. Additionally, the level of "cultural competence" required may vary by your state's requirements. But regardless of those requirements, your entity may have contractually committed to varying levels of cultural competence measures. Generally, to make this issue more complicated for providers, minimal guidance is often provided by the payor or the contract.

The Checkup: Are you aware of the specific "competence" benchmarks buried in your contracts? These can vary significantly by state and payor.

The Bottom Line

These aren't just "legal details"—they are binding commitments that can trigger a breach of contract if ignored. Too often, these obligations are signed but never operationalized. To protect your practice, you must ensure that your team doesn't just read these agreements but actually builds them into your daily workflows. Because these contracts directly impact patient care and your bottom line, we strongly recommend reviewing them with experienced health care counsel before the ink dries.

Please feel free to reach out to Grant Dearborn, Ginny Dailey, Daphne Kackloudis, Mara Rendina, or a member of Shumaker's Health Law Team with questions or for more information.