

# Contract Compliance

Getting Full Value from Your Business Arrangements  
Healthcare Benefits

April 2013

Sue Ulrey and Jim Kreiser



CliftonLarsonAllen

[cliftonlarsonallen.com](http://cliftonlarsonallen.com)



## Agenda

Why is Contract Compliance Important?

Current Market Dynamics

Causes of Undetected Reporting Errors

Benefits from Performing Contract Compliance Reviews

Considerations in Reviewing Healthcare Benefits and Claims

- Contracts
- Claims

## Why is Contract Compliance Important?

- An increasing number of companies are engaging in commercial relationships with third parties in which payments and receipts are based upon *self-declarations or self-reporting*.
- Any company that has portions of its business, (especially healthcare and pharmacy benefit management), conducted by another party inherently faces control, revenue, and expense risks.
- Problems arise when risks associated with these relationships are not properly monitored and evaluated. For example, changing market conditions may trigger changes to key contract terms, such as:
  - Utilization triggers;
  - Service Level Agreements/Performance Guarantees;
  - Pricing Tiers

## Current Impacts and Market Factors for Contract Compliance Focus

- **Driving Factors**
  - Increasing competition through healthcare exchanges
  - Disclosure and transparency of pricing
  - Broker involvement and increased focus on performance guarantees
  - Drivers from Affordable Care Act:
    - ◇ Age 26 rules
    - ◇ 80/20 rules for rebates on medical loss ratios (MLR)
    - ◇ Small Business Tax Credits
  - Increased efficiency and timeliness due to medical records
  
- **Impacts to Organizations**
  - Health care claim audits (for self-insured companies)
  - Rights to Audit?
  - Performance Guarantees within contracts
  - Pricing Tiers (Bronze, etc.)
  - PBM relationships and rebates/pricing

## Does Your Organization Have Performance Guarantees or Audit Provisions?

**The Causes of Undetected Reporting Errors are Typically Unintentional, yet the Consequences are Significant**

### Most Common Causes of Reporting Errors

- Failure to devote sufficient resources to managing the contractual relationship
- System weaknesses result in failure to support compliance with contractual obligations
- Misunderstood, complex, and ambiguous agreements
- Failure to review self-report information provided by a business partner
- Less frequently, fraud (or upcoding/overutilization)

### Results

- SLAs operating levels not attained
- Most-favored customer pricing is not passed on
- Unauthorized purchase expenditures are bundled and billed to contract invoices
- Use of inaccurate contract billing rates
- Inappropriate use of sublicensing of intellectual property, processes, or equipment
- Inappropriate discounts or deductions
- Sub-licensed products without vendor authorization
- Contract non-compliance leading to breach in contract and vendor liability

## Benefits Obtained from Performing Contract Compliance Reviews

- **Financial**
  - Recoveries from Investigation Units can be/should be passed through to the organization
  - Claim errors, overutilization, or clinical care involvement can reduce overall claim expenses
- **Business process improvement**
  - Does your plan incorporate contractual provisions for health coaching or preventative care/awareness programs?
  - Improved decision making on plan structures, costs, etc.
- **Enhanced contract language**
  - Reduced ambiguity
  - Measurement of terms
  - Inclusion of audit rights and performance requirements
- **Compliance with qualitative contract terms**
  - Performance Guarantee rebates
  - Enhanced insight into PBM activities, costs
  - Drug rebates and tier structures

## How Can Audit Rights and Performance Guarantees Improve ROI?

- **Return on investment**
  - Recovered cash from overpricing, inappropriate claims, TPL/subrogation, etc.
  - Self reporting of operational/claim units is often different than internal audit, corporate performance, or other audit units
  - Contracts must stipulate claims audit requirements and pass through of recoveries in performance guarantees
  - Pass through of drug rebate amounts
- **Business process improvement**
  - Improved quality of information
  - Improved internal control and governance environment regarding healthcare costs
- **Enhance contract language and SLAs**
  - Enhance and refine SLAs (Performance Guarantees – including PBM activities)
  - Improved measurement terms and metrics
  - How to confirm if your plan is compliant with 80/20 rules, Age 26, etc.?

# Considerations in Reviewing Healthcare Benefits and Claims

## Contract

- Ownership of Claim Files. Often times, plans will not allow direct access to audit claim information/files – but will include provision for internal audit/corporate performance groups to perform audits.
- Services Covered
- Settlement Authority
  - If providers settle with the plan, how do we ensure these refunds get posted and adjusted against the organization's claims?
- Performance Guarantees/Penalties
- Exclusions
- Right to Audit Clauses
- Access to Data
  - Given notes above regarding limits on claim audits, may need to ensure to specifically structure the nature, sample sizes, etc. of claim testing performed (90% confidence interval, 250 claim limit, etc.)
- Record Retention Requirements
- PBM records and audits



# Considerations in Reviewing Healthcare Benefits and Claims

## Healthcare Claims

- Periodic Review of Claims for:
  - Eligibility
  - Covered and Non-Covered Services
  - Appropriately Priced
  - Co-Pays and Deductibles
  - Lifetime / Other Maximums
  - Duplicate Payments
  - Payments Outside of the Coverage Period
- Service Level Agreements are Met
- Other Technical Performance Measures are Correctly Adhered to
- Performance Guarantees and Penalties are Applied Correctly

## Internal Considerations for Governance and Audit

### Governance Considerations

- Does your organization have effective controls for timely and accurate reporting of eligibility and member data?
  - Lags in timing of reporting? Have noted issues that resulted in excess of \$100k due to delays in reporting terminated/separated employees
  - Errors in member reporting of spouses/divorces, dependents, and affiliated data can result in unnecessary losses
- If organization does have access to claim files and related data – are appropriate compliance and access controls implemented:
  - Disclosure monitoring and reporting?
  - HIPAA?
  - Others (hotlines, etc.)
- These provisions for governance, contract requirements (including PBM), and monitoring of the market (including use of brokers) can lead to improved costs structures, ROI, and healthcare plan efficacy.