

Jackson County Memorial Hospital Board Retreat February 7, 2009



CROWE&DUNLEVY
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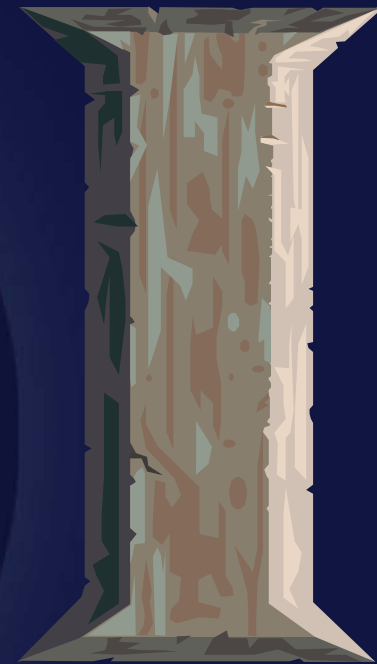
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2009 Top 10 Health Law Issues

- **Healthcare Reform and the Uninsured**
- What will Obama and Daschle do?
- Considerable momentum despite bad economy.



Top 10 (cont.)

- **Impact of Economy on Provider Operations**
 - Declining revenue
 - Increase in uninsured
 - Decline in investment income
 - Increase in Bad Debt
- **Capital Finance**



Top 10 (cont.)

- **Quality**

- Focus on quality ever since the IOM's report, *To Err is Human*.
- Resulted in several public and private efforts to improve quality.



Quality

- CMS' decision not to pay additional amounts for 8, soon to be 11, “never events” or hospital-acquired conditions.
 - Foreign object retained after surgery
 - Air embolism
 - Blood incompatibility
 - Pressure ulcers
 - Patient falls
 - Catheter-associated urinary tract infections
 - Vascular catheter-associated infection
 - Surgical site infection

Quality

- **Joint Commission's Leadership Standards**
 - Focus on establishing a culture that fosters safety as a priority.
 - Management of safety and quality of care is the direct responsibility of leaders.
 - In hospitals with a governing body, governance has ultimate responsibility for oversight.

Quality

- Patient Safety and Quality Improvement Act of 2005
 - Final regulations became effective on January 19, 2009
 - Patient Safety Organizations – to collect, analyze patient safety data
 - Maintain confidentiality and security of data such as incident reports

Top 10 (cont.)

- **Stark and Hospital/
Physician Relations**

- Significant regulatory changes announced in 2008
- Increased CMS auditing
- Government personnel changes



Stark Law

- Restructuring in response to regulatory changes
 - Certain “under arrangement” and per click/percentage based leases will need restructuring to meet a Stark exception or will need to be unwound by October 1, 2009.

Stark Law

- **Restructuring (cont.)**
 - A joint venture between a hospital and a physician group in which the hospital pays the joint venture to provide a hospital “technical” service, will be considered an entity that performs the designated health service.

Stark Law

- **Restructuring (cont.)**
 - A physician's ownership interest must meet a Stark law exception *or* the physician must either
 - Divest;
 - Restructure; or
 - Halt referrals.
- Per click and percentage based leases are no longer permitted.

Stark Law

- **Auditing and Enforcement**
 - In 2007, CMS began an initiative to implement a survey to investigate physician compensation arrangements with hospitals and determine compliance with the Stark Law.
 - Disclosure of Financial Relationships Report (“DFRR”)

Stark Law

- **Auditing and Enforcement (cont.)**
 - DFRR is an extensive worksheet and covers direct and indirect financial relationships.
 - On January 16, the AHA sent a letter to the OMB urging it to deny CMS the authority to proceed with DFRR

Stark Law

- Political climate

- Two CMS regulators instrumental in creating the recent Stark rules are leaving the agency.
- Incoming administration may push a universal or expanded healthcare coverage agenda and increase scrutiny of physician-hospital relationships.

Top 10 (cont.)

- **State and Federal Efforts to Reduce Medicaid Payments**
- 43 states projected to experience budget shortfalls.
- CMS released two sets of regulations at the end of 2008 giving states more flexibility in designing their Medicaid programs.

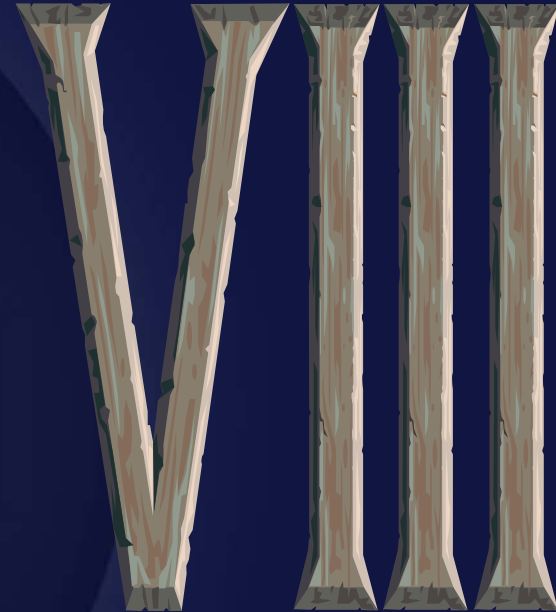


Top 10 (cont.)

- **Re-employment of Physicians by Hospitals**
 - JCMH already employs a significant portion of the physicians on its medical staff.
 - The employment of physicians fell out of favor in the 90s, but is gaining renewed interest.
 - Legal issues are fairly straight-forward with an employment model.

Top 10 (cont.)

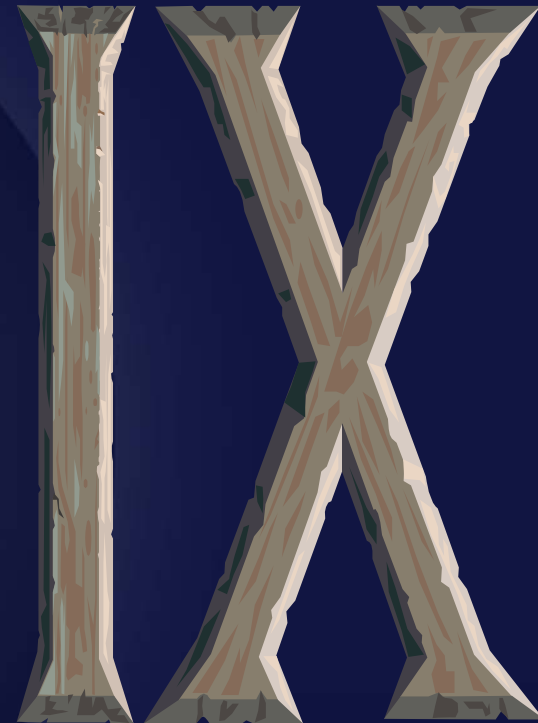
- **Vendor-Provider Relationships**
 - Relationships with device manufacturers and pharmaceutical companies are under a lot of scrutiny.
 - Compliance issue – concern regarding kick-backs and conflicts of interest.



Top 10 (cont.)

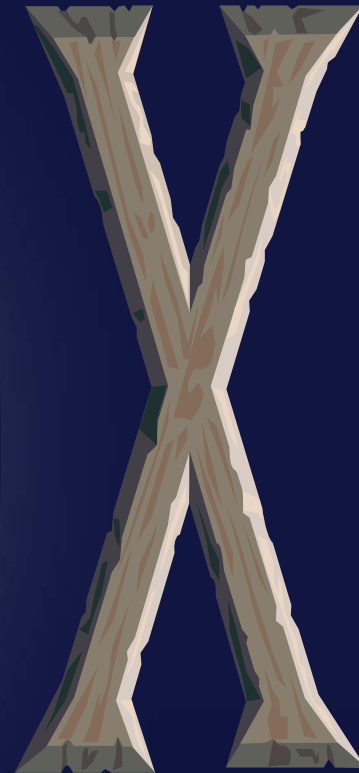
- **Electronic Health Records**

- Increased government pressure to implement health information technology.
- Additional privacy and security issues.
- Related issue is e-discovery issues in litigation.



Top 10 (cont.)

- **Recovery Audit Contractors**
 - CMS is launching new initiatives using program integrity contractors to conduct audits and identify overpayments.
 - Started as a 3-year demonstration project.



RACs

- Review Medicare Part A and B claims
- Paid a contingency fee for any improper payments identified.
- \$1.03 billion was collected pursuant to the pilot program – 85% from hospitals.
- CMS named 4 permanent RAC auditors, but a bid protest has delayed the process.

Employment Law

- **ADA Amendments Act of 2008**
 - Effective January 1, 2009
 - Expands coverage under the ADAAA: more individuals will qualify for protection.

Employment Law

- **Religious Discrimination**

- July 22, 2008 the EEOC released a new Compliance Manual section clarifying guidance.
- At the same time, the EEOC issued 2 summary documents:
 - *Best Practices for Eradicating Religious Discrimination in the Workplace*
 - *Questions and Answers: Religious Discrimination in the Workplace*

Employment Law

- Reasonable Accommodation
 - An employer must provide an employee with a reasonable accommodation for sincerely held religious beliefs unless doing so would impose undue hardship.
 - The new guidance expressly identifies scheduling changes, changing of job tasks, voluntary substitutes, flexible schedules, and swapping of shifts as examples of reasonable religious accommodations.

Employment Law

- **The Employee Free Choice Act**
 - Proposed legislation
 - Designed to reverse a decline in unionization
 - Establishes dramatic changes in the unionization process.

Employment Law

- **Lilly Ledbetter Fair Pay Restoration Act**
 - Act overturns a 2007 Supreme Court decision that imposed a 180 day filing period.
 - Employees now have 300 days from the date of their last paycheck to file claim.
 - Employer can be liable for back pay, as well as damages.

Medical Staff

- The goal for most hospitals today:
 - Redesign the medical staff to operate as an accountable leadership body, enabling effective partnership and achievement of vision and goals.
 - *The Bard Group, LLC.*

Medical Staff

- Hospitals and physicians must work together.
 - Financial stability
 - Physician discipline/peer review
 - EMTALA
 - Quality of care.
 - Just to name a few.

Medical Staff

- Alignment

- The model of “alignment” must be expanded beyond financial relationship models to strategic and operational relationship models.

Medical Staff

- Moody's quote from September 27, 2005:
 - Many not-for-profit hospitals and health systems are revisiting physician employment models, a strategy that sent some down in flames in the mid-1990s, according to a report by credit-rating agency Moody's Investors Services.

But this time around hospitals appear to be more prudent and disciplined in their physician integration strategies, and Moody's expects to see more moves by hospitals to integrate more closely with doctors over the next two to three years.

Medical Staff

- JCMH already is substantially integrated with a high percentage of employed physicians.

— KUDOS!

Medical Staff

- Hospitals and physician must commit to partnering in matters of strategy, priorities, resource allocation and operations improvement.



Medical Staff

- Joint Commission now requires
 - Hospitals to develop a formal process for defining and addressing unacceptable behavior for healthcare professionals;
 - Conduct Focused and Ongoing Professional Evaluations that goes beyond the historical case-by-case reviews.

Conflicts of Interest

- The Law: 60 O.S. Section 178.8
 - . . . [A] conflict of interest shall be deemed to exist in any contractual relationship in which a trustee of a public trust, or any for-profit firm or corporation in which such trustee or any member of his or her immediate family is an officer, partner, principal stockholder, shall directly or indirectly buy or sell goods or services to, or otherwise contract with such trust. Upon a showing thereof, such trustee shall be subject to removal and such contract shall be deemed unenforceable as against such trust unless the records of such trust shall reflect that such trustee fully and publicly disclosed all such interest or interests, and unless such contractual relationship shall have been secured by competitive bidding following a public invitation to bid.

Conflicts of Interest

- **Public Policy**
- [P]ublic policy is contravened when a public official places himself in a position which is inconsistent with his public function or which interferes with his unbiased performance of his duties or has a tendency to induce him to violate such duty **regardless of whether it can be shown that the public actually suffered any detriment.** Atty. Gen. Op. 80-212 (September 8, 1980) (Emphasis added).

Questions

