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Crowe Healthcare Webinar Series

Physician Time Studies: An Important Component of An Effective Compliance Program

Presented by: Ron Wolf and Jerry Lear

Learning Objectives

- Understand some emerging risks in the area of physician arrangements
- Explain the regulatory/policy history and evolving legal framework surrounding physician arrangements and time studies
- Identify the challenges and pitfalls of existing time study processes
- Recognize the benefits of leveraging technology to enhance compliance and reduce risks

Physician Arrangement Concerns

Inherent Risks of Physician Compensation Arrangements:

- Physician Self-Referral Law (“Stark Law”)
- The Anti-Kickback Statute (“AKS”)
- The Civil False Claims Act (“FCA”)
- June 9, 2015 OIG Fraud Alert – Physician Compensation Arrangements May Result in Significant Liability
- June 22, 2016 OIG Alert – Improper Arrangements and Conduct Involving HHAs and Physicians
- The strict liability nature of the Stark Law makes review of employment agreements and employed practices important.
- A violation of the Stark Law can lead to nonpayment of claims, civil monetary penalties, program exclusions and may create liability under the FCA.

Physician Arrangement Concerns

Key stakeholders:

- Physician Leadership – Both Provider and Administration
- Legal Department
- Corporate Responsibility Officers
- Revenue Cycle Management
- Credentialing Personnel
- Internal Coding Department



Physician Arrangement Concerns

Common Physician Arrangements:

- Employment
- Administrative Services
- Professional Services
- Call Coverage
- Space Leases
- Co-Management
- Recruitment/Income Guarantees
- Relocation Bonus
- Loan Payment Forgiveness
- Time Shares
- Embedded
- MSO
- Reverse MSO
- Joint Ventures

Physician Arrangement Concerns

Administrative Service Contracts (Medical Directorships, Physician Leadership Positions, Hospital Committee Work):

- Contract must be in writing - Verify contract is not expired
- Have documentation stating the need and purpose for the administrative services - Services must not exceed what is reasonable and necessary for a legitimate business purpose
- Make sure the list of services in the contract is detailed and confirmed by the responsible manager.
- Compensation must be set in advance (typically hourly), at fair market value, and not based on referrals
- Should be signed before services are rendered
- Must reference master contract database
- Perform independent agreement review of compensation to contract.
 - Use of attestation of a time worked log to document physician hours worked.
 - Time worked log should be detailed.

Physician Arrangement Concerns

Compensation Arrangements Types – The Pancake Effect:

Patient Experience Bonus

Productivity/Incentive Bonus

Co-management Agreement

Retention Bonus

Tail Insurance

Relocation Costs

Sign-on or Retention Bonus

Medical Administrative Directorship

Quality Bonus

Call Pay

Excess Private Benefits – Auto Allowance

Financial Performance

- The key is to identify all the Providers compensation arrangements and their cumulative impact when compared to FMV value and commercial reasonableness valuations

Physician Arrangement Concerns

The Pancake Effect (Continued):

Considerations:

- Hours worked per agreement and their cumulative effect (only 24 hours)
- Compensation – cumulative effect

Use benchmarking as a guide toward reasonableness:

- Compensation per wRVUs or total RVUs
- Compensation to professional collections
- Compensation to total collections
- Compensation per encounter

Regulatory/Policy History and Emerging Legal Framework

Why prepare time studies?

- Documentation required per Regulations and Program Instructions for reimbursement
 - 42 CFR §415.60(b)(1-3)
 - CMS Pub. 15-1 §2113.2 E
- DOJ and OIG Focus on Physician Compensation
 - Anti-Kickback Statute
 - Physician Self-Referral Law (“Stark”)
 - False Claims Act (“FCA”)
 - June 2015 Fraud Alert

Regulatory/Policy History and Emerging Legal Framework

Allocation of Physician Compensation Costs

- 42 CFR §415.60(b)(1-3)
 - “General rule - ... each provider that incurs physician compensation costs must allocate those costs, in proportion to the percentage of total time that is spent in furnishing each category of services, among - ...Physician services to the provider (Part A); Physician services to patients (Part B); and Activities of the physician, such as funded research, that are not paid under either Part A or Part B of Medicare.”

Regulatory/Policy History and Emerging Legal Framework

Periodic Time Study Requirements

- CMS Pub 15-1 §2313.2E
- The time records to be maintained must be specified in a written plan submitted to the Intermediary no later than 90 days prior to the end of the cost reporting period to which the plan applies.
- A minimally acceptable time study must encompass at least one full week per month of the cost reporting period.
- Each week selected must be a full work week (Mon-Fri, Mon-Sat, or Sun-Sat).
- The weeks selected must be equally distributed among the months in the cost reporting period.

Regulatory/Policy History and Emerging Legal Framework

Periodic Time Study Requirements Cont'd

- CMS Pub 15-1 §2313.2E Cont'd
 - No two consecutive months may use the same week for the study.
 - The time study must be contemporaneous with the costs to be allocated. Thus, a time study conducted in the current cost reporting year may not be used to allocate the costs of prior or subsequent cost reporting years.
 - The time study must be provider specific. Thus, chain organizations may not use a time study from one provider or a sample group to allocate the costs of other providers within the chain.

Polling Question

How do you currently complete time studies?

- Paper
- Web entry
- Excel
- We don't

Regulatory/Policy History and Emerging Legal Framework

Anti-Kickback Statute

- 42 USC §1320aa-7b(b)
 - **Criminal penalties** for physicians and entities “who knowingly and willfully solicit or receive any remuneration” in exchanges for patient referrals from federal health care programs
 - Remuneration includes anything of value, including excessive compensation for medical directorships or consultancies
 - Potential consequences of violation include:
 - **Jail terms** of up to five years
 - Fines of up to **\$25,000 per violation**
 - Expulsion from participation in federal health care programs
 - **Penalties of up to \$50,000 per kickback plus three times the amount of remuneration**

Regulatory/Policy History and Emerging Legal Framework

Physician Self-Referral Law (“Stark Law”)

- 42 USC §1395M
- Prohibits physicians who have a financial relationship, including compensation arrangements, with a health care entity from referring patients to that entity to receive “designated health services” billed to federal health care programs
- Mandates that all payments made to referring physicians be at **fair market value** for the services rendered.
- Potential consequences of violation include:
 - Denial of payments
 - Refund of payments
 - **A\$15,000 per service civil penalty**
 - **Civil assessments of up to three times the amount claimed**

Regulatory/Policy History and Emerging Legal Framework

False Claims Act (“FCA”)

- 31 USC §§3729-3733
- Prohibits submission of fraudulent claims for payment to federal health care programs
 - Claims that violate the Anti-Kickback Statute and/or the Stark Law may also render the claims fraudulent under FCA
- Civil penalties include fines of up to **three times the program's loss plus \$21,563 per claim filed***

Regulatory/Policy History and Emerging Legal Framework

OIG Fraud Alert – Physician Compensation Arrangements

- June 9, 2015 fraud alert issued regarding potential for medical directorships to violate the anti-kickback statute
- Medicare and Medicaid Patient Protection Act of 1987
- Compensation arrangements must reflect **fair market value for bona fide services that physicians actually provide**
- Looking at both sides (physicians and hospitals) of these arrangements for potential civil and criminal liability
- Supporting documentation, time studies and job descriptions, should reconcile to contract terms
- Automated time study systems can be mutually beneficial to all parties in ensuring regulatory compliance and mitigating risk

Polling Question

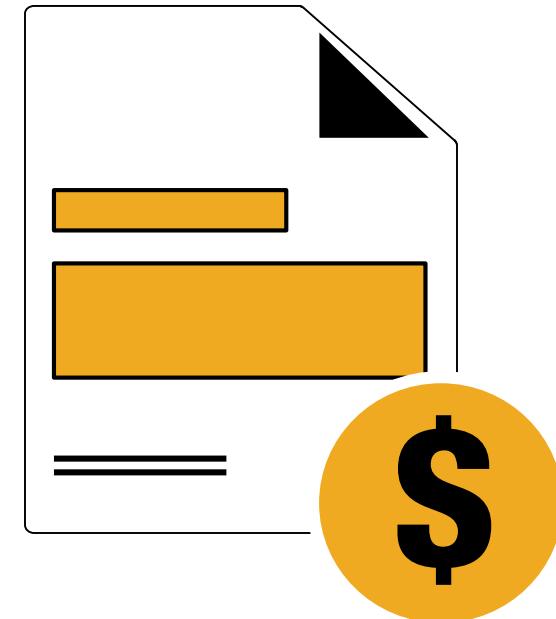
Which of the following statutes allow for “treble” damages with respect to the imposition of penalties?

- Anti-Kickback Statute
- Physician Self-Referral Law (“Stark”)
- False Claims Act
- All of the above

Regulatory/Policy History and Emerging Legal Framework

DOJ – “Yates” Memorandum

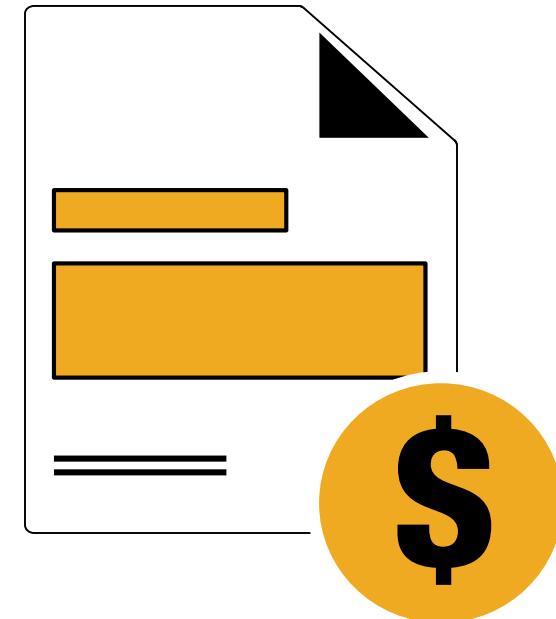
- September 9, 2015 memo issued regarding individual accountability for corporate wrongdoing
- New emphasis to prosecute individual employees of corporations just like corporations themselves
 - Always could do this but DOJ is signaling a more aggressive approach
 - Directed at CEOs and other senior officers
- <http://www.justice.gov/dag/file/769036/download>



Regulatory/Policy History and Emerging Legal Framework

DOJ – “Yates” Memorandum

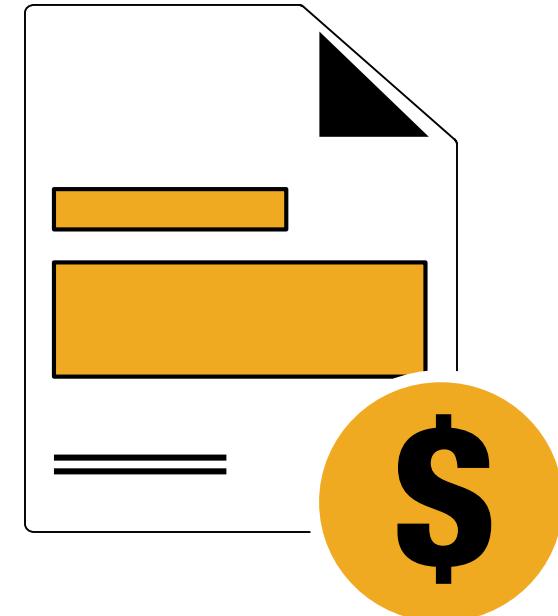
- In order to qualify for any cooperation credit, corporations must provide to the Department all relevant facts relating to the individuals responsible for the misconduct
- Criminal and civil corporate investigations should focus on individuals from the inception of the investigation
- Criminal and civil attorneys handling corporate investigations should be in routine communication with one another



Regulatory/Policy History and Emerging Legal Framework

DOJ – “Yates” Memorandum

- Absent extraordinary circumstances or approved departmental policy, the Department will not release culpable individuals from civil or criminal liability when resolving a matter with a corporation
- Department attorneys should not resolve matters with a corporation without a clear plan to resolve related individual cases, and should memorialize any declinations as to individuals in such cases
- Civil attorneys should consistently focus on individuals as well as the company and evaluate whether to bring suit against an individual based on considerations beyond that individual's ability to pay



Regulatory/Policy History and Emerging Legal Framework

Recent Case Examples

- Forest Park Medical Center – Dallas (December 1, 2016) - Uncle Sam indicts 21 individuals for massive conspiracy to pay and receive kickbacks and bribes totaling more than \$40 million for patient referrals. Unique use of the Travel Act and Health Care Fraud Statute
- National Health Care Fraud Takedown (July 13, 2017) - The largest ever health care fraud enforcement action by the Medicare Fraud Strike Force, involving 412 charged defendants across 41 federal districts, including 115 doctors, nurses and other licensed medical professionals, for their alleged participation in health care fraud schemes involving approximately \$1.3 billion in false billings

Regulatory/Policy History and Emerging Legal Framework

Recent Case Examples

- Missouri Hospitals Agree to Pay United States \$34 Million to Settle Alleged False Claims Act Violations Arising from Improper Payments to Oncologists
(May 18, 2017)
 - “Two Southwest Missouri health care providers have agreed to pay the United States \$34,000,000 to settle allegations that they violated the False Claims Act by engaging in improper financial relationships with referring physicians, the Justice Department announced today.”
 - “The settlement... resolved allegations that the Defendants submitted false claims to the Medicare Program for chemotherapy services rendered to patients referred by oncologists whose compensation was based in part on a formula that improperly took into account the value of their referrals of patients to the infusion center operated by the Defendants. Federal law restricts the financial relationships that hospitals and clinics may have with doctors who refer patients to them.”

Regulatory/Policy History and Emerging Legal Framework

Recent Case Examples

- Dallas-Based Physician-Owned Hospital to Pay \$7.5 Million to Settle Allegations of Paying Kickbacks to Physicians in Exchange for Surgical Referrals (December 1, 2017)
 - “Pine Creek Medical Center LLC (“Pine Creek”), a physician-owned hospital serving the Dallas/Fort Worth area, has agreed to pay \$7.5 million to resolve claims that it violated the False Claims Act by paying physicians kickbacks in the form of marketing services in exchange for surgical referrals, the Department of Justice announced today.”
 - “The government alleged that, between 2009 and 2014, Pine Creek engaged in an illegal kickback scheme whereby the hospital would pay for marketing and/or advertising services on physicians’ behalf and, in return, the physicians would refer their patients, including Medicare and TRICARE beneficiaries, to Pine Creek.”

[Https://www.justice.gov/opa/pr/missouri-hospitals-agree-pay-united-states-34-million-settle-alleged-false-claims-act](https://www.justice.gov/opa/pr/missouri-hospitals-agree-pay-united-states-34-million-settle-alleged-false-claims-act)

Regulatory/Policy History and Emerging Legal Framework

Recent Case Examples

- Los Angeles Hospital Agrees to Pay \$42 Million to Settle Alleged False Claims Act Violations Arising from Improper Payments to Physicians (June 28, 2017)
 - “Pacific Alliance Medical Center, an acute care hospital located in Los Angeles, California, agreed to pay \$42 million to settle allegations that they violated the False Claims Act by engaging in improper financial relationships with referring physicians”
 - “resolves allegations brought in a whistleblower lawsuit that the defendants submitted false claims to the Medicare and MediCal Programs for services rendered to patients referred by physicians with whom the defendants had improper financial relationships... (1) arrangements under which the defendants allegedly paid above-market rates to rent office space in physicians’ offices, and (2) marketing arrangements that allegedly provided undue benefit to physicians’ practices.”

[Https://www.justice.gov/opa/pr/los-angeles-hospital-agrees-pay-42-million-settle-alleged-false-claims-act-violations-arising](https://www.justice.gov/opa/pr/los-angeles-hospital-agrees-pay-42-million-settle-alleged-false-claims-act-violations-arising)

Regulatory/Policy History and Emerging Legal Framework

Other Case Examples

- Adventist Health (Sept 21, 2015) - \$118M settlement to resolve allegations that Adventist violated the False Claims Act by maintaining improper compensation arrangements with referring physicians.
- North Broward Hospital District (Sept 15, 2015) - \$69.5M settlement to resolve FCA allegations related to physician compensation arrangements that were above FMV and not commercially reasonable.
- Columbus Regional Healthcare System (Sept 4, 2015) - \$35M settlement to resolve former executive's FCA suits accusing system of overpaying referring oncologist. Violated Stark

Regulatory/Policy History and Emerging Legal Framework

Other Case Examples

- Tuomey (Oct 16, 2015) - \$72.4M settlement related to improper 10-year employment contracts to 19 specialists in exchange for performing all outpatient procedures.
- Halifax Hospital Medical Center (2014) - \$85M settlement to resolve FCA allegations that the hospital violated Stark Law and Anti-Kickback by entering into employment contracts with six oncologists above FMV and containing improper incentive bonus. The government alleged that the referrals resulted in 74,838 claims being submitted with corresponding overpayments of \$105,366,000.

Challenges and Pitfalls of Existing Time Study Processes

Limitations

- Increased workloads and demands on time
- Excessive paperwork
- Low participation
- Information difficult to interpret/prone to error
- Distribution and collection of data is logistical nightmare

Polling Question

What completion rate are you experiencing?

- Less than 50%
- 50% to 64%
- 65% to 80%
- More than 80%

Challenges and Pitfalls of Existing Time Study Processes

Key Vulnerabilities

- Time entry and signatures not contemporaneous with time study period
- Physician activities do not reconcile to underlying contracts
- Adherence to Stark Law exceptions
- Effect of Contractor reform

Benefits of Leveraging Technology

Why automate time studies?

- Seamless and integrated process
- Automated paperless process
- Easy-to-use and flexible input options
- No manual entry, organized database and reporting
- Reduced audit risk and increased reimbursement potential

Benefits of Leveraging Technology

Key Capabilities of Automated Time Study Systems:

- Are accessible on smart phones, tablets, laptops, and personal computers so that physicians may enter and/or approve their time from any location, making documentation a natural part of their daily routine
- Have customizable views that minimize the risk of errors by allowing for input of information pertaining only to the physician's activities
- Allow for administrative support and automatic email reminders to promote acceptance and increase participation

Benefits of Leveraging Technology

Key Capabilities of Automated Time Study Systems Cont'd:

- Provide a single repository for all supporting documentation needed at time of audit
- Offer exception reports and drill-down capabilities that provide proactive oversight in real time
- Include reporting capabilities relevant to allocation agreements, administrative time, teaching time, emergency department availability, transplant time, research grants, and other areas

Polling Question

What type of technology do your physicians primarily use?

- Smart phones
- Tablets
- Laptop/PC
- None

Benefits of Leveraging Technology

Capture

Administration

- Load end user data
- Mapping
- Establish schedules

E-mail reminders

Easy user input

- Smart phones
- Tablets
- PCs
- Laptops

Document

Allocation

Agreements

Time Studies

- Administrative
- Teaching
- ED availability
- Transplant
- Research

Other Time Reporting Needs

- Productivity/Effort

Report

Cost Report

- S-3, Part II **
- A-8-2
- B-1
- D-4

Home Office

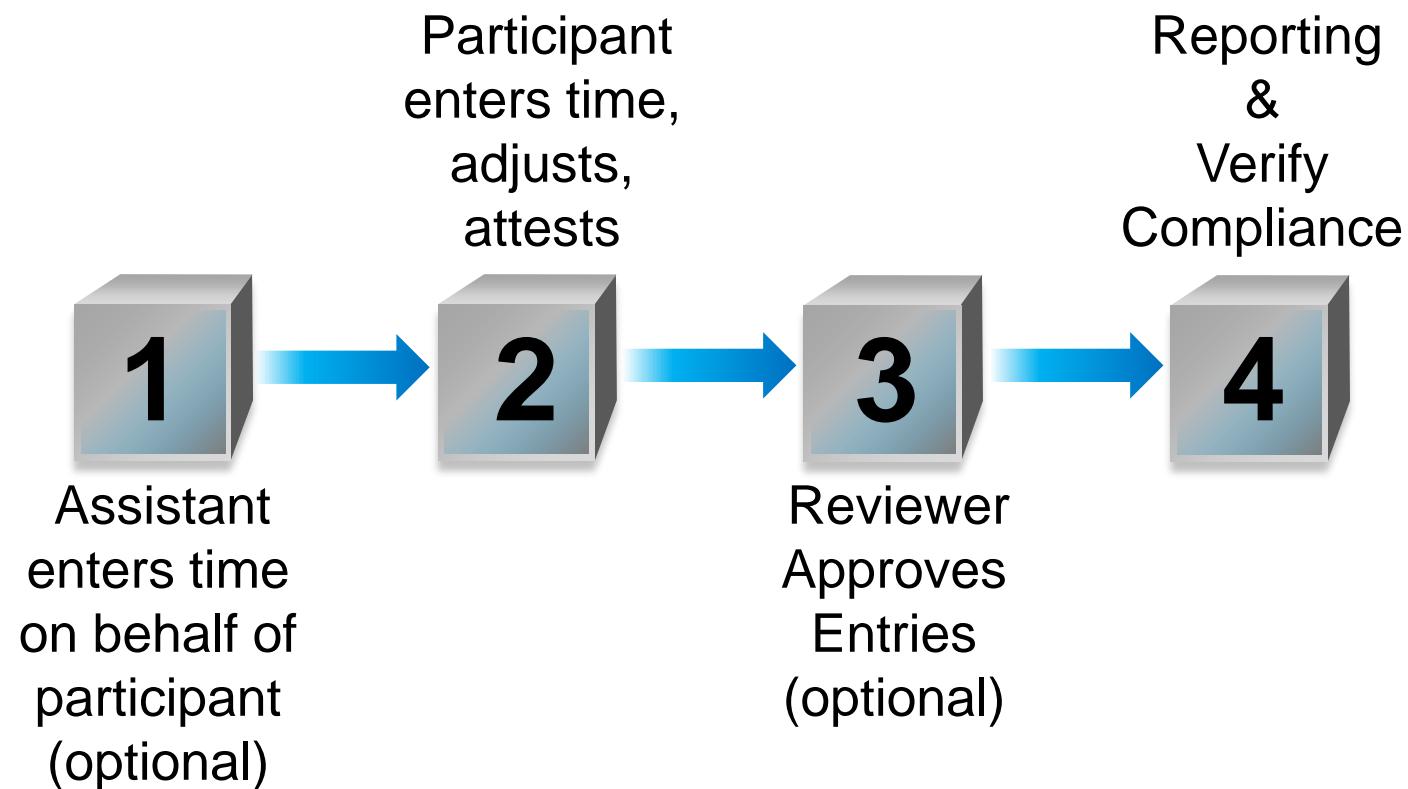
Grant Applications

Operations

*** Automatic link to Crowe®
Wage Index Navigator*

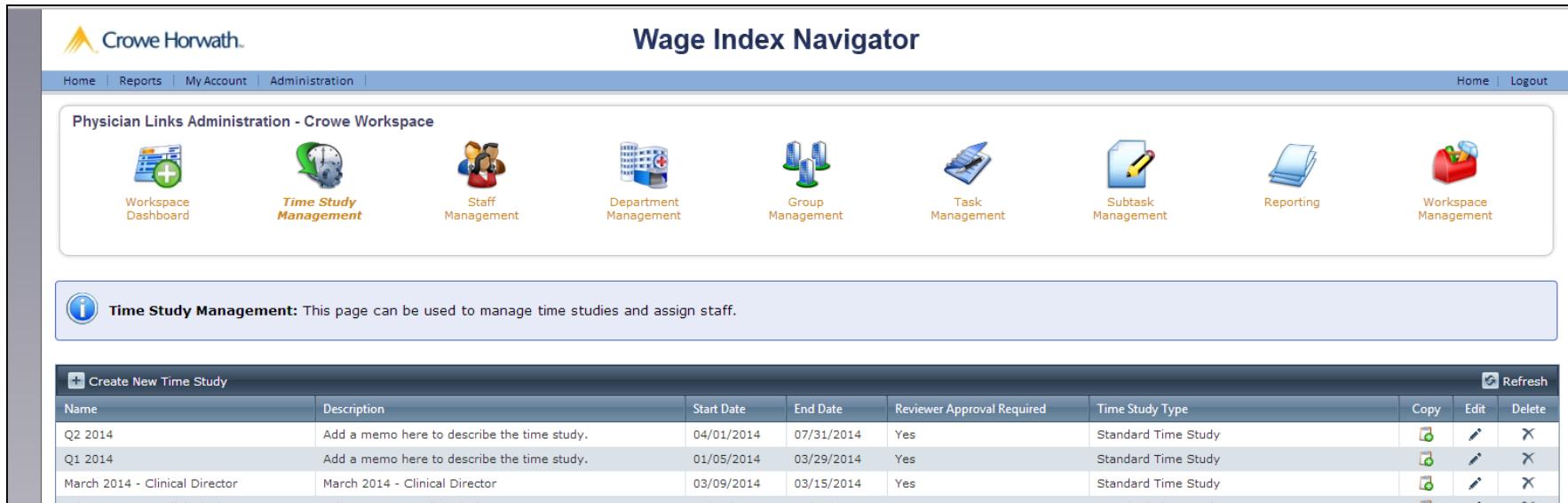
Benefits of Leveraging Technology

Time Study Work Flow



Benefits of Leveraging Technology

Crowe Physician Links – Simple to Administer



The screenshot shows the 'Wage Index Navigator' interface for 'Physician Links Administration - Crowe Workspace'. The top navigation bar includes links for Home, Reports, My Account, Administration, Home, and Logout. Below the navigation is a toolbar with icons for Workspace Dashboard, Time Study Management, Staff Management, Department Management, Group Management, Task Management, Subtask Management, Reporting, and Workspace Management. A message box states: 'Time Study Management: This page can be used to manage time studies and assign staff.' A table titled 'Create New Time Study' lists three entries: 'Q2 2014', 'Q1 2014', and 'March 2014 - Clinical Director'. The table columns are: Name, Description, Start Date, End Date, Reviewer Approval Required, Time Study Type, Copy, Edit, and Delete. The 'Edit' and 'Delete' buttons for each row are represented by icons of a pencil and a trash can.

Name	Description	Start Date	End Date	Reviewer Approval Required	Time Study Type	Copy	Edit	Delete
Q2 2014	Add a memo here to describe the time study.	04/01/2014	07/31/2014	Yes	Standard Time Study			
Q1 2014	Add a memo here to describe the time study.	01/05/2014	03/29/2014	Yes	Standard Time Study			
March 2014 - Clinical Director	March 2014 - Clinical Director	03/09/2014	03/15/2014	Yes	Standard Time Study			

Benefits of Leveraging Technology

Crowe Physician Links – Web Entry

 **Physician Links** Logged in User: Ron Wolf
[Contact Us](#) | [Change Password](#) | [Change Username](#) | [Log Out](#)

Overview **Help** Choose Role: Admin Assistant

The following grid displays all time studies for your participants. It should give you high-level information about each time study, including time currently entered and time waiting to be submitted for approval. To work on behalf of one of the participants, click on the  icon in the grid. This will allow you to enter time, edit and remove time, and attach documents as if you were working on their behalf. On all other pages, please use the dropdown menu in the top-right corner to work on behalf of a different participant or come back to this page by clicking the 'Overview' button. Click on the  icon to remind the participant to submit their time.

	Last Name	First Name	Time Study	Time Study Start Date	Time Study End Date	Contract Hours	Time Entered	Current Status
 	Freud	Sigmund	September 2014	08/31/2014	09/06/2014	40.00	0.00	No Activity
 	Jung	Carl	September 2014	08/31/2014	09/06/2014	40.00	0.00	No Activity
 	Jung	Carl	August B 2014	08/17/2014	08/23/2014	40.00	52.00	Entered
 	Freud	Sigmund	August B 2014	08/17/2014	08/23/2014	40.00	60.00	Awaiting Reviewer Approval
 	Jung	Carl	August 2014	08/10/2014	08/16/2014	40.00	63.00	Awaiting Reviewer Approval
 	Freud	Sigmund	August 2014	08/10/2014	08/16/2014	40.00	49.00	Fully Approved*
 	Freud	Sigmund	July 2014	06/29/2014	07/05/2014	40.00	48.00	Fully Approved*
 	Jung	Carl	July 2014	06/29/2014	07/05/2014	40.00	56.00	Fully Approved*

1 50 items per page 1 - 8 of 8 items

Benefits of Leveraging Technology

Crowe Physician Links – Mobile Entry

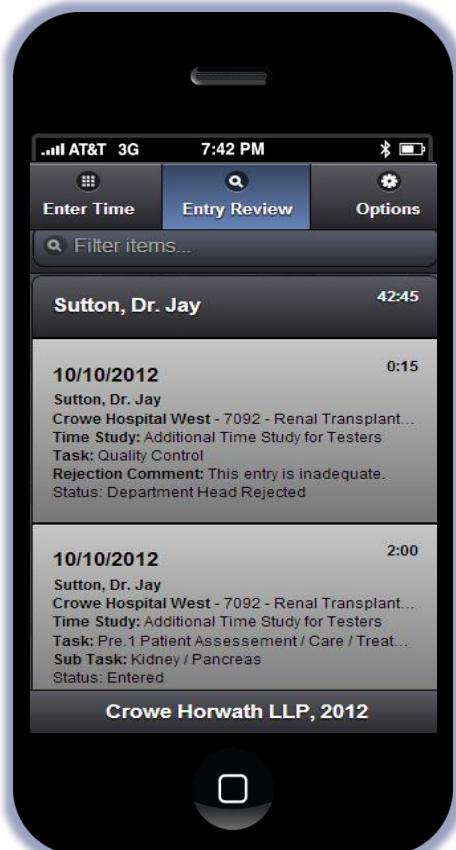
Home Screen



Time Entry



Entry Review



Thank you

Ron Wolf

Phone +1 636 346 9871

ron.wolf@crowehorwath.com

Jerry Lear

Phone +1 314 303 2322

jlear@chanllc.com

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