

NAVIGATING THE MAZE

*Cheri Benander, MSN, RN, CHC, NHCE-C
Health Services Consultant, HealthTechS3*

PHYSICIAN CONTRACTS

The development and implementation of physician contracts can be extremely complicated. When developing these contracts, the Stark Laws and Anti-kickback statutes have to be taken into consideration. The Stark Law was enacted almost 30 years ago and was developed to remove financial motivations for physicians to order unnecessary testing, and to control overall health care costs. There have been changes in the Stark Law over the past several years to include exceptions and clarifications. The Anti-Kickback statute prohibits payment of remuneration to induce or reward referrals. While this is a popular concept in some businesses, it is a crime in Federal Health Care programs.¹ These types of inducements can lead to overutilization, increased program costs, corruption of medical decision-making, patient steering, and unfair competition.²

The rules themselves can be rather complicated and difficult to understand. Violations of the laws come with stiff penalties. Any Medicare funds received based upon an arrangement that violates the Stark Laws or Anti-kickback statutes must be repaid and violators could face significant fines, criminal charges, and program exclusion.

In May of 2017, Mercy Hospital in Springfield Missouri and its affiliate clinic infusion center settled with the Department of Justice for \$34 million.³ The ownership of the clinic was transferred to the hospital to take advantage of 340B discounts, which impacted the physicians' compensation model. In order to compensate the physicians for their loss, the hospital made up their income by paying amounts in excess of the physicians work and overhead.⁴ Another recent

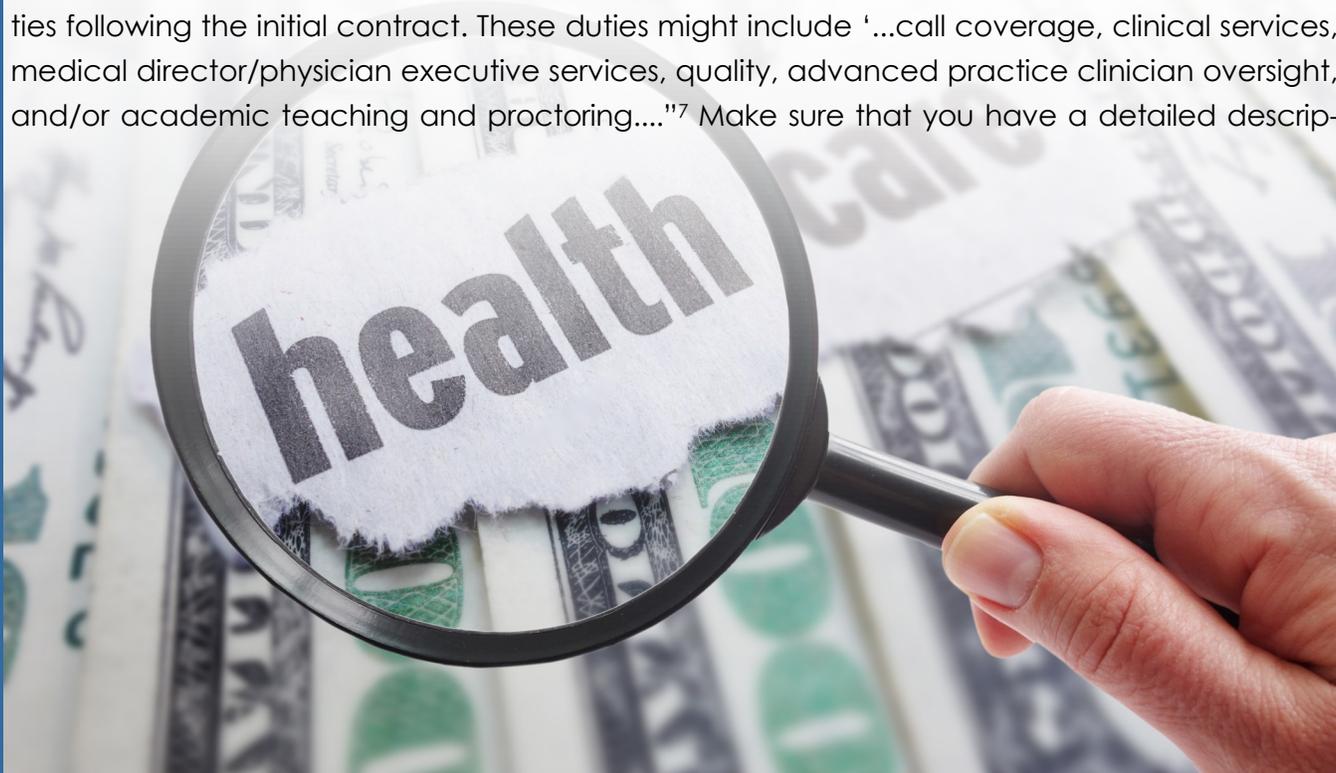


case in New York ended with a \$4 million settlement that was reached based on a lease agreement with a physician organization. The hospital was providing "...below-market rent for offices and provided free janitorial services, utilities, stationary, collection of medical waste, subsidized parking for patients, phone, fax and pager services, as well as providing human resources services for employees."⁵

As you can see, violations can prove costly for organizations. According to Johnson (2018), there are some common sense steps you can take to ensure that your contracts are properly set up. Those include:

1. Understand if the service is needed (absent referrals) to help establish that the arrangement is commercially reasonable.
2. Confirm that the value or volume of referrals is not considered as a basis for compensation.
3. Ensure the transaction or compensation terms are clearly outlined, set in advance, and agreed upon in writing.
4. Properly document the supporting evidence for establishing the compensation is at fair market value.
5. Monitor the arrangement to ensure the services are still necessary and being performed in accordance with the agreement terms.⁶

Beware of stacked physician compensation. Compensation arrangements must be consistent with fair market value (FMV). In many cases, physicians receive additional compensated duties following the initial contract. These duties might include "...call coverage, clinical services, medical director/physician executive services, quality, advanced practice clinician oversight, and/or academic teaching and proctoring..."⁷ Make sure that you have a detailed descrip-



tion of the services listed in the agreement and that you have documentation to support fair market value. Actual duties should match what is in the contract, if there are changes over the course of the agreement, be sure to document them.

There are over 50 exceptions and safe harbors to the rules. This can make developing compliant agreements difficult and cumbersome. While there are some general steps you can take, such as those listed on the previous page, it is wise to have all physician agreements reviewed by an attorney. In many cases, facilities will develop a template that has undergone legal review and then use the template for all future agreements. Be cautious when using these templates, any changes made to the template would necessitate additional legal review to ensure the document remains compliant.

An annual audit will also help to identify any risk as it relates to compliance. At the end of each fiscal year, reconcile physician contracts. Make sure that the document has been signed and dated, all aggregate compensation is within fair market value, hours are being tracked and quality metrics are being reviewed to ensure quality outcomes. If compensation is based upon a WRVU model “Ensure benchmarking analyses are performed and review to see if compensation and productivity are reasonably aligned.”⁸

Violations of Stark Laws and the Anti-Kickback Statutes can prove costly for organizations. Be proactive in reducing your liability by ensuring that physician contracts and resultant compensation is compliant. There some common sense steps that can be taken to make sure the contracts are properly set up but to reduce potential liability, it is wise to have a legal review performed on each contract and have compliance audits in place.

Additional information, along with an exception and safe harbor comparison chart can be accessed at <http://www.bricker.com/resource-center/medicare-medicaid/key-resources/resource/comparison-chart-of-stark-exceptions-and-anti-kickback-safe-harbors-447>



1 Office of Inspector General. (OIG). A roadmap for new physicians: fraud & abuse laws. Available from <https://oig.hhs.gov/compliance/physician-education/01laws.asp>

2 Indem

3 Cohen, J. & Freedman, L. (2017). Hospital and its clinical agree to \$34 million settlement to False Claims Act Allegation that compensation to Oncologists violated the stark law. Available from <https://www.healthlawpolicymatters.com/2017/05/24/hospital-and-its-clinic-agree-to-34-million-settlement-to-false-claims-act-allegation-that-compensation-to-oncologists-violated-the-stark-law/>

4 Indem

5 Hall Render, Killina Health & Lyman. (2017, October 5). New York hospital owner pays \$4 million real estate-related settlement to settle false claims act and stark law allegations. Available from <http://www.hallrender.com/2017/10/05/new-york-hospital-owner-pays-4-million-settlement-to-settle-false-claims-act-and-stark-law-allegations>

6 Johnson, J. (2018, January). Compensation and compliance: Five common sense steps. *Compliance Today*

7 Warner, B.B. & Warrington. T.A. (2018, March). Stacked physician compensation: Keys to compliance. *Compliance Today*

8 Indem

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For more information, please contact Cheri Benander:

Cell: 307-202-0315

Main: 615-309-7421

cheri.benander@healthtechs3.com

5110 Maryland Way, Suite 200 | Brentwood, TN 37027

www.healthtechs3.com

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