Physician Compensation Issues: Why "Survey Says?!" May Be Totally Wrong and More

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Agenda

- Brief overview of the relevant laws.
- Stark's limits on a compensation both in clinics and hospital systems.
- Analysis of how a focus on salary surveys in health systems is misguided.
- Why "systems lose money on physicians" is both untrue and a really foolish thing to say.
- Relationships between hospitals and physicians, including medical directorships, gainsharing/co-management, leases.
- Relationships between physicians and organizations like drug and device companies.

Medicare Antikickback Statute

- It is illegal to offer, solicit, make or receive any payment intended to influence referrals under a federal health care program.
- The government applies the “one purpose” test. If one purpose of the payment is to influence referrals, the payment is illegal.
- Only applies to payments from OUTSIDE of the corporation.

56 F.R. 35952 (July 29, 1991)

"Comment: Many commenters requested the OIG to clarify that payments between corporations which have common ownership are not subject to the statute. Commenters cited as examples intracorporate discounts and payments between two wholly-owned subsidiaries. Some commenters argued that referral arrangements between two related corporations do not constitute "referrals" within the meaning of the statute, and suggested that the OIG define the word "referral" to exclude such activity.

Response: We agree that much of the activity described in these comments is either not covered by the statute or deserves safe harbor protection. **We believe that the statute is not implicated when payments are transferred within a single entity, for example, from one division to another. Thus, no explicit safe harbor protection is needed for such payments.**

Antikickback Statute

- Intent is everything. The question: Is the payment intended to curry favor? Keep asking “why?”
- If the payment is “bait” to get someone to listen, there is a defense. If the gift is to get someone to act, take cover immediately.

Antikickback Protection

- Safe harbors exist, but they are VERY narrow.
- They will cover payments for services as long as the payment is reasonable for the work done.
- Common sense takes you a long way with the antikickback law. Remember, you don't need to fit in a safe harbor.
- Different lawyers can approach this VERY differently. Understand how yours does. ("We didn't find an advisory opinion, suggesting this is illegal…")

Trouble?

- Hospital provides a physician a medical directorship without expecting actual work.
- A physician plays two hospitals off of one another saying, “if you don’t provide us with free advertising, we will take our business to the other hospital.”
- Can a physician demand faster OR turn-around, “or else?”

Stark

- If an entity provides Designated Health Services (DHS), any financial relationship with a physician (or physician's immediate family member) who referred patients for DHS must meet an exception.
- Financial relationships can be ownership or compensation. Stark covers two types of compensation, direct or indirect.

Stark

- Applies only to Designated Health Services (DHS) for Medicare (and probably Medicaid), but all hospital services are DHS. (See next slide for others.)
- Intent doesn't matter; you must meet every part of an exception.
- Not criminal; but the penalty is up to $15,000/claim.

“Designated Health Services”

- Clinical laboratory.
- Physical therapy.
- Occupational therapy.
- Radiology services.
- Radiation therapy services and supplies.
- Durable medical equipment and supplies.
- Parenteral and enteral nutrition.
- Prosthetics and orthotics.
- Home health services.
- Outpatient prescription drugs.
- Inpatient and outpatient hospital services.

Stark is Sneaky

- It is much harder to do a Stark analysis.
- The exceptions have weird traps.
- Is “takes into account” different from “varies with?” Is “based on” different from “varies with?”

Stark Quirks

- The offending financial relationship may be unrelated to the referrals. (Lawn mowing. Or a child who is a device distributor.)
- "Referral" includes making a plan of care.
- The "entity" includes both
  - The entity billing for the service AND the entity providing the service.
    - This prohibits "under arrangements" relationships if the physician who orders the service is providing it "under arrangements."

Key Concepts

- Payment must be at fair market value. (FMV).*
- Payment often must be “set in advance” and either not “based on” or “take into account” the “volume or value of referrals**” or “other business generated by the parties.

*Indirect compensation is different! More soon!

** “Referrals” are only DHS.

Takes into account: Per Click?

- If a physician is referring patients to a DHS service, the physician may not be compensated on a “per click/per use” or percentage basis.
  - Example: Physician owns scanner, leases it to hospital for $500/scan. That is impermissible.

Takes into account: Per Click?

- The same lease is permissible if the payment is a flat fee per month.
- Per click/per use leases are still permissible if the owner does not refer to the lessee.
  - Example: Clinic or hospital leases scanner from a retired physician or a physician whose practice does not involve ordering imaging.

In Office Ancillary Exception.

- The strongest exception: protects ownership and compensation. A silver bullet for clinics and systems.
- Allow physicians to be compensated for work “incident to” physician work. Health systems may want to use it!
- Has many conditions.

“Group Practice”

- Single legal entity.
- At least 2 physicians who are group “members”.
- Each physician member provides full range of care through the group.
- Substantially all (75%) of the patient care services provided by physician members are billed in the name of the group.
- Group members must personally conduct 75% of all physician-patient encounters for the group.

"Group Practice"

- Distribution of income and expenses determined in advance.
- Unified business, centralized decision-making.
- No compensation based on volume or value of DHS referrals (sharing overall profits or profits from a "component" of the group consisting of at least 5 physicians is o.k.).

Concerns for Group Practices

- Do you bill as a group? If box 33 lists a physician, rather than the group name, you are NOT billing under the name of a group.
- Increasing use of professional service agreements may cause group to fail to bill in its name 75% of the services provided by the group.
- Large group practices may lack unified business and centralized decision-making.
- Compensation formulas that allocate profits from components of the group that fall below 5 physicians.

Location, Location, Location

- Group practices can furnish services in a "centralized location." Other physicians must be in the "same building."
- "Centralized location" can be offsite as long as there is supervision. If anyone else bills for any DHS in the space, it is NOT a centralized location.
- The "same building" tests are problematic unless you see patients 35 hours a week at the location/30 with a physician present.

Location, Location, Location

- The other “same building” tests only allow you to provide DHS to patients you see primarily at that location. Medicare/caid patients from other locations can’t get DHS.
- The bottom line: DHS can be across the street, but only if you bill for all the services there.

Same Building: Choice 1

The equipment is located in the physician's principal place of practice.

This test is satisfied when the services are provided in a building in which the referring physician or group practice:

A) has an office open at least 35 hours a week; AND
B) sees patients at least 30 hours a week.

Same Building: Choice 2

The referring physician practices in the building where the services are provided at least 1 day a week and the building is the principal place where patients referred see the referring physician.

Same Building: Choice 2

The three elements to this test are:

A) The physician or group practice has an office in the building that is normally open at least 8 hours a week.

B) The referring physician furnishes physician services in that office at least 6 hours a week. Services provided by other group members are not included in this 6 hours calculation.

C) The building is the principal place where the referred patient sees the physician.

“Same Building” Choice 3

The services are provided in a building in which the physician or group sees patients at least one day a week and the service is ordered during a patient visit or a physician is present during the service.

"Same Building" Choice 3

A) The physician or group practice has an office in the building that is open at least 8 hours a week.

B) The physician or group members regularly practice in that office at least 6 hours a week.

C) Either:

i) the physician orders the service during a patient visit; or

ii) the referring physician or a group practice member is present when the service is furnished.

Advanced Imaging Notice

- Give written notice to all MR/CT/PET pts. (E-mail is ok.)
- At time of referral (i.e. NOT registration).
- Must indicate patient can go elsewhere.
- Address/phone for at least 5 “suppliers” within 25 miles. (If fewer than five, list them. If none, no notice necessary.)
- Can say more; may wish to warn about insurance coverage.

Stark and the compensation formula

- Stark suggests that if less than 5% of all revenue of the group, and less than 5% of each physician's comp is from DHS, you may not need to worry about it the comp. formula.
- Stark does NOT require equal division of compensation.

Stark and the compensation formula

- Technically only applies to Medicare (and Medicaid?)
- Pay on RVUs excluding DHS.
- Pay on RVUs and services that would be DHS but are for private pay. (Beware of state law and I am very uncomfortable with the risk of error.)

Stark and the compensation formula

- Choose an allocation and stick with it. (i.e. spine surgeon shares more PT, but less imaging.)
- Equal division.
- Seniority.
- Any combo of above.

Avoiding Stark Landmines

- With few exceptions (employment), agreements must be written.
- Amendments must be written as well.
- Know your relationships!!!
- Use auto-renewal terms!

Antikickback v. Stark

Antikickback	Stark
– Criminal.	– Civil.
– Civil monetary penalties/exclusion.	– $15,000 per claim/$100,000 for circumvention scheme (fines apply only if bills are submitted).
– Intent is everything.	– Intent is irrelevant.

Antikickback v. Stark

- If you meet a safe harbor, you win. If you do not meet a safe harbor, analyze intent.
- Only applies to relationships outside the corporation.
- Must meet an exception, or else.
- Applies to both transactions with others and intraorganization relations, including your compensation formula.

Antikickback v. Stark

- Covers everything paid for by a federal health care program (beware of state law extensions).
- Can get advisory opinion.

- Covers only designated health services paid by Medicare or Medicaid (but note definition of group practice).
- Can get advisory opinion.

Non-Profit/Tax Exemption Issues

- "Private inurement/private benefit" occurs when a person gets an undeserved benefit from a tax exempt organization.
- Intermediate sanctions allow the IRS to recoup the money, plus penalties, from the recipient.

Compensation or Dividend?

- Some cases have argued that the if a non-shareholder (physician/NP/PA) leaves money on the table, it must be treated as a dividend, not compensation.
- Even bigger focus on ancillaries.
- Words matter. Beware of “profit.”

Fee Splitting

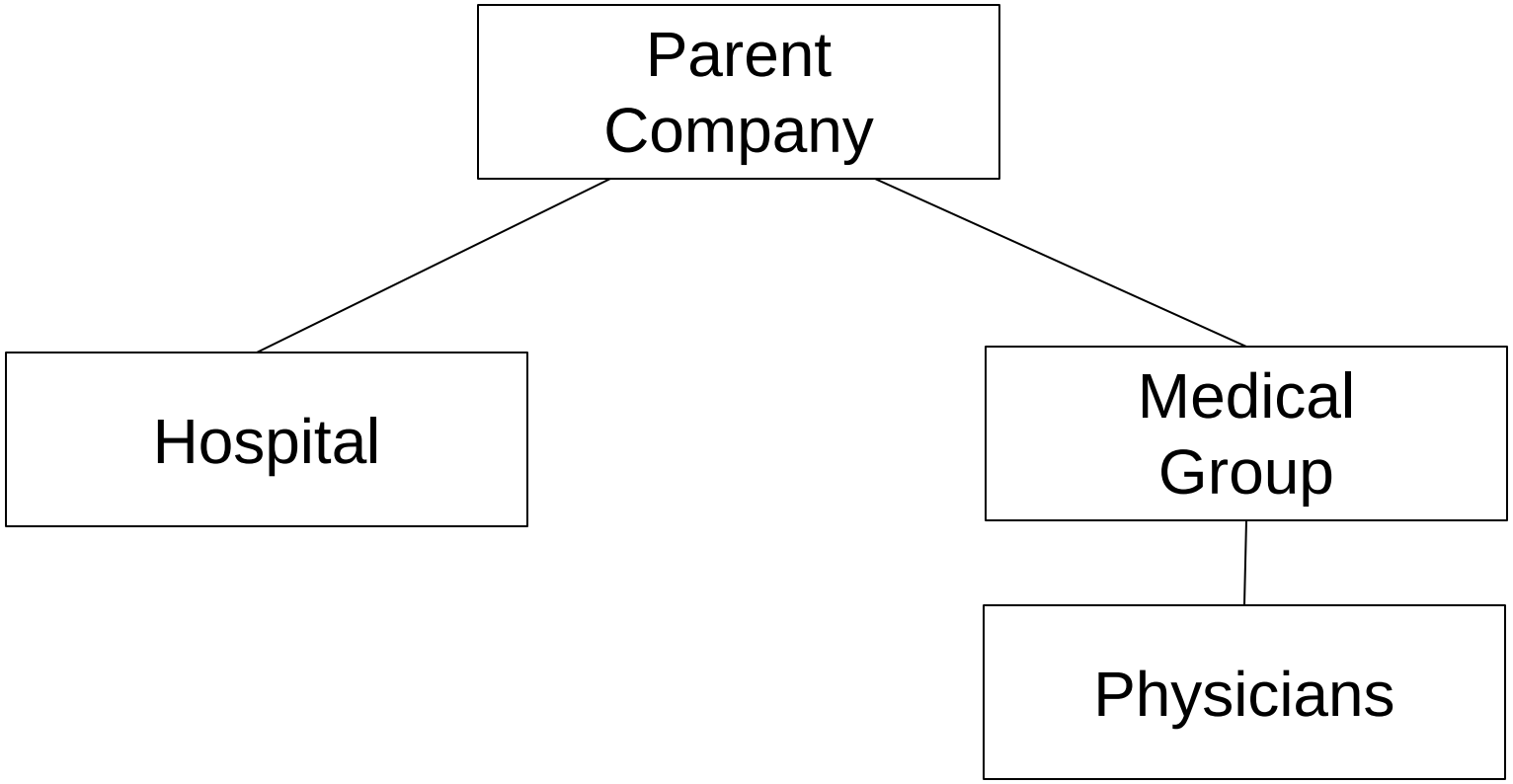
- May prohibit a physician from sharing revenues with non-physicians, and/or physicians outside of the group except on the basis of work performed.
- May be in ethical rules.
- Unusual interpretations can prohibit percentage management contracts. (See Florida).
- Notice to patients?

Hospitals and Employed Physicians

- Don’t need to worry about antikickback.
- Stark is huge.
  - Direct or indirect compensation?

Stark: Direct or Indirect?

- Is the entity that provides the DHS the same as the one paying the physician, or is there an "intervening entity?"
  - 42 C.F.R. § 411.354(c)(1)(i).



Stark: Direct or Indirect?

- Is the entity that provides the DHS the same as the one paying the physician, or is there an "intervening entity?"
  - 42 C.F.R. § 411.354(c)(1)(i).
- Hospital in one entity, medical group is separate? Indirect compensation if hospital subsidizes Drs.
- If the medical group provides lab, x-ray etc. may still have direct.

Possible Stark Exceptions

- Stark treats direct and indirect comp. differently.
- Comp. from a medical group to the physician is direct and should meet the employment exception.
- Comp. (subsidies and other payments) from other medical system entities must meet the indirect compensation exception, if it is indirect comp.

Employment Exception

- “Identifiable” services.
- Consistent with FMV and not determined in a manner that takes into account directly or indirectly the volume or value of any referrals.
- Commercially reasonable even if no referrals.
- Productivity bonus for personally-performed services okay.
- Need not be written!

Indirect Comp: Plain English

- Does the payment “take into account” the volume or value of referrals?
- Mathematical question, but also a metaphysical one.

Indirect Compensation Requires:

(i) Between the referring physician (or a member of his or her immediate family) and the entity furnishing DHS there exists an unbroken chain of any number (but not fewer than one) of persons or entities that have financial relationships . . . between them (that is, each link in the chain has either an ownership or investment interest or a compensation arrangement with the preceding link);

(ii) The referring physician (or immediate family member) receives aggregate compensation from the person or entity in the chain with which the physician (or immediate family member) has a direct financial relationship that varies with, or takes into account, the volume or value of referrals or other business generated by the referring physician for the *entity furnishing the DHS* . . . . ; and

(iii) **The entity furnishing DHS has actual knowledge** of, or acts in reckless disregard or deliberate ignorance of, the fact that the referring physician (or immediate family member) receives aggregate compensation that varies with, or takes into account, the volume or value of referrals or other business generated by the referring physician for the entity furnishing the DHS.

42 C.F.R. § 411.354(c)(2).

Stark: Burden of Proof

- The government will have the burden of proving that the compensation meets the definition of indirect compensation.
- "Once the government has established the proof of each element of a violation under the Act, the burden shifts to the defendant to establish that the conduct was protected by an exception." *U.S. ex rel. Kosenske v. Carlisle HMA, Inc.*, 554 F.3d 88, 95 (3d Cir. 2009).

Things to Note

- Government must prove all three.
- "Referral" very specific: "a request by a physician for, or ordering of, DHS." 42 CFR § 411.351
- Only referrals/business (i.e. in/outpatient services) from physicians to hospitals matter. Professional services irrelevant.
- "Fair market value" does not appear.

Indirect Compensation: *Tuomey* Instruction

"An indirect compensation arrangement means that the referring physician receives aggregate compensation from the entity in the chain with which the physician has a direct financial relationship that varies with, or otherwise takes into account, the volume or value of referrals or other business generated by the referring physician for the entity furnishing services."

Indirect Compensation Exception

- Consistent with FMV and not determined in a manner that takes into account directly or indirectly the volume or value of any referrals.*
- Commercially reasonable even if no referrals are made to the hospital.
- In writing, signed by the parties, specifying the services covered by the arrangement.
  - Except *bona fide* employment relationship (must be for identifiable services & commercially reasonable if no referrals, but needn't be written).
- Does not violate AKS.

* huh??

Indirect Comp Exception

(1) (i) The compensation received by the referring physician (or immediate family member) described in § 411.354(c)(2)(ii) is fair market value for services and items actually provided and not determined in any manner that takes into account the volume or value of referrals or other business generated by the referring physician for the entity furnishing DHS.

(ii) Compensation for the rental of office space or equipment may not be determined using a formula based on—

(A) A percentage of the revenue raised, earned, billed, collected, or otherwise attributable to the services performed or business generated in the office space or to the services performed on or business generated through the use of the equipment; or

Indirect Comp Exception

(B) Per-unit of service rental charges, to the extent that such charges reflect services provided to patients referred by the lessor to the lessee

(2) The compensation arrangement described in § 411.354(c)(2)(ii) is set out in writing, signed by the parties, and specifies the services covered by the arrangement, except in the case of a bona fide employment relationship between an employer and an employee, in which case the arrangement need not be set out in writing, but must be for identifiable services and be commercially reasonable even if no referrals are made to the employer.

(3) The compensation arrangement does not violate the anti-kickback statute (section 1128B(b) of the Act), or any Federal or State law or regulation governing billing or claims submission.

42 CFR § 411.357(p)

"Takes into account"

"Accordingly, the question, which should properly be put to a jury, is whether the contracts, on their face, took into account the value or volume of anticipated referrals. As the Stark Regulations and the agency commentary indicate, compensation arrangements that take into account anticipated referrals do not meet the fair market value standard. Thus, it is for the jury to determine whether the contracts violated the fair market value standard by taking into account anticipated referrals in computing the physicians' compensation." *Tuomey I*, 675 F.3d 394, 409 (4th Cir. 2009), underlining added.

How Is Compensation Sliced?

- 42 CFR § 411.354(c)(2)(ii) states that indirect compensation arrangements examine "**aggregate** compensation from the person or entity in the chain with which the physician (or immediate family member) has a direct financial relationship."
- Compensation is considered in its entirety (aggregate).
- There is no temporal demarcation.

Government Must Show

- By preponderance, a violation of the Stark law.
- "Knowledge".
  - "substantial risk that the contracts violated the Stark law, and was deliberately ignorant of, or recklessly disregarded risk." *U.S. ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 376 (4th Cir. 2015) (*Tuomey II*).
- Related to a claim.
  - Stark violations taint every single claim for DHS made as a result of a referral by physician with a prohibited financial relationship.

Case Law and Settlements

- Cases very rarely go to trial.
- If a motion to dismiss or summary judgment motion is unsuccessful, defendants almost always settle.
- Examples:
  - Tuomey: $247m verdict/$72.4m settlement. (19 physicians)
  - Adventist Health Systems: $118.7m settlement. (many)
  - North Broward Hospital: $69.5m settlement. (9)
  - Halifax Health: $85m settlement. (9)
  - Columbus Regional Health: $35m settlement. (1)
  - Covenant Med. Ctr: $4.5m settlement (2009). (5)

Case Law and Settlements

- *U.S. ex rel. Schubert v. All Children's Health System, Inc.*, Case No. 8:11-cv-01687-T-27EAJ (M.D. Fla. 2013) (Order, Docket Entry 68).
- Eventually settled for $7m.
  - "Relator endeavored to create a fair market value benchmark by drawing from the median of three nationwide salary surveys and creating a competitive salary range …She then uses that information to allege a fair market value benchmark for all subspecialists identified in the complaint, and alleges that the salaries identified in the complaint exceed that benchmark. Assuming these allegations to be true, as required at this stage, they are sufficiently particular to satisfy Rule 9(b)."

Death of Common Sense (and Math)?

- Survey says?
  - Is 50th percentile a ceiling? What about 75th? 90th?
- Conventional wisdom in this area is awful. True analysis seems rare.
- FMV is supposed to ignore presence of referrals. Is that even possible?

Surveying the Environment

- Meghan Wong at MGMA has explained "the data are not intended to be used as an academic data set for extrapolating to the U.S. population of physicians," and are not a "one-to-one representation of the universe of medical practices that are in the country."*
- High and low responses are thrown out.

*Thanks to Tim Smith, Ankura Consulting, and Forthcoming BVR/AHLA Guide to Valuing Physician Compensation and Healthcare Service Arrangements

Surveying the Environment

- Do people understand “total compensation?”
- Is there an inverse relationship between productivity and per RVU compensation?
- Do groups comply with the “professional data only, no technical fees” request?

Analyze This

- 90th Percentile Interv. Card. CF in 2012:

  AMGA: $102.06 MGMA: $86.47

- 90th Percentile RVU IC.:

  2009 16,758

  2010 18,316

  2011 16,136

  2012 15,208 (20% swing from 2010!)

“We Lose Money on Every Physician.”

- If true, is this a problem?
- Is it true?
  - How is overhead calculated and allocated?
  - How is revenue allocated?
- What about ancillaries?

Beware of Bad Lawyering!!

- 4 cases discuss Medicare Manual language from 1992 that was “written with Stark in mind.”
- The discussion relates to hospital services.
- Stark I (1989) only applied to lab. Hospital services were added in Stark II. Stark II was passed in??

Gainsharing

Gainsharing/Shared Savings/ Co-Management/Alignment Your Label Here!

- What is it?
- Labels don't really matter. What is "Shared Savings"??

Shared Savings

- Goal is reducing waste.
- Savings may be from conservation.
  - Avoiding drug wastage.
  - Avoid using costly service.
- Savings may come from standardization.
- Payment for efficiency is kosher and popular.
- Savings from lower costs implants.

Gainsharing/Shared Savings/ Co-Management/Your Label Here!

- Labels do not matter, but…..
- Law DOES matter.
- Federal law prohibits payments intended to reduce services to Medicare beneficiaries.
- The government used to say gainsharing was illegal. That is totally last century.
- It is 100% clear that gainsharing/shared savings can be done legally.

Gainsharing/Shared Savings/ Co-Management/Your Label Here!

- At least 16 favorable OIG Advisory Opinions, starting in 2001.
- "Pending further notice from the OIG, gainsharing arrangements are not an enforcement priority for OIG unless the arrangement lacks sufficient patient in-program safeguards." 79 F.R. 59715, 59729 (Oct. 3, 2014).
- The advisory opinions offer guideposts:
  - Payment caps.
  - Utilization targets.
  - Disclosure.
  - Hourly payments are low risk.

How Do You Split the Savings?

- The Advisory Opinions are 50-50.
- Advisory Opinions are not law, but they are useful guidance.
- CMS worries when payments exceed the Medicare fee schedule payments.
- Know the 4 big laws.

Can You Do It With Employed Physicians?

Can You Do It With Employed Physicians?

- Sure, why not.

Can You Have Long Term Payments?

- The conventional wisdom limits payments to one year.
- But see Advisory Opinion 12-22. “The management agreement is written with a three-year term, and thus is limited in duration.”
- Some people claim it only addresses co-management. They’re wrong.
- The payment must be reasonable.

Co-Management Details

- Do you need a new entity?
- Make sure the terms are clear.
- Can physicians really control the key payment factors?
  - Press-Gainey scores?
  - Turn-around times?
  - Scheduling?
  - Staff turnover?
  - Implant use?

The Hidden Trap

Gainsharing: Good Idea Goes Bad

According to her lawsuit, Kathleen Davis suffered a significant complication after having a Medtronic pacemaker implanted at Methodist in 2004. She said that her cardiologist made a startling confession when she asked what happened to cause a twitching in her abdomen. He told her that she probably would have fared better

A Good Idea Goes Bad

with another brand of pacemaker, but that Methodist administrators had leaned on him to install the Medtronic model to help the hospital collect on what he called a kickback deal, the lawsuit said.

Des Moines Register, Feb. 9, 2006

Think Before You Type

"Frank [the physician] has made no attempt to comply with the contract. . . I am prepared to reschedule his devices to be in compliance with the contract," wrote Tim Nelson, a hospital manager who has since left the company, in one e-mail obtained from the court file.

Des Moines Register, Feb. 9, 2006

Think Before You Type

In another e-mail in the court records, Butz [another administrator] wrote: "Frank did say ... that he would abide by a contract that paid him money for compliance." In the e-mail, which Butz wrote to Methodist's chief operating officer, David Stark, he said, "Isn't there a joke along these lines — now that we have established what he is, we are simply negotiating over price."

Des Moines Register, Feb. 9, 2006

The Bottom Line

- Hospitals will care about the bottom line!
- Words matter.
- Bundled payments are likely here to stay. Cost pressure isn't likely to abate.
- Direct relationships with device companies must be vetted. Discounted devices seem quite defensible.

The Bottom Line

- Savings are good. Hospitals offering or physicians receiving financial incentives for savings is legal, and wise. Just be smart.
- Shared savings is no riskier than many other practices.

Call Coverage/Medical Director

- If the pay is reasonable for the work, all is well.
- Need written agreement. BEWARE OF STARK'S TIGER TRAP!!!!
- Some call coverage deals include "back door" changes to the medical staff rules.

Professional Services Arrangement

1. Clinic or physicians contract with hospital to provide services.
2. Hospital bills for the services.

Decision: Provider-Based?

- Pro: Better reimbursement.
- Con: 20% Co-pay.
  - Can't bill "incident to" (Shared visit ok).
  - 72-Hour rule applies.
- Anything more than 250 yards from the hospital is "off campus," creating significant regulatory burdens.

Recruitment

- The Stark exception is narrow enough to be of limited value.
- It is often not worth the hassle of trying to get recruitment payments.
- That said, 2007 amendments loosened some terms.

Recruitment: Noncompetes

- Before: If a physician clinic received a payment from the hospital, it could not restrict the physician's ability to practice during the financial relationship.
- Now: May not "unreasonably restrict" physician's practice. Little guidance of what "reasonable" is; some non-compete ok.
- Practical effect: A clinic can likely require a recruited physician to agree to pay liquidated damages. "Springing" non-competes and other creative ideas are unnecessary.

Recruitment: Income Guarantees

- Before: If a hospital guaranteed a physician's income, only actual marginal expenses incurred recruiting the physician could be included in the compensation formula.
- Now: Certain overhead may be allocated in a **rural area** or **HPSA** if replacing a departing physician.

Relationships with Drug/Device Companies

- Scrutiny on the increase.
- Do you know what is happening in your organization?
- Remember that sales staff have an incentive to characterize things as "ok."

Neiman Marcus or Marshall's?

- An off-label use of a device greatly helps cardiac patients.
- The company asks a physician to give a speech about the merits of the device.
- Labeling matters!

Getting Concrete

- Device rep really wants a physician's advice. Offers to pay $200/hour if physician will attend a focus group in San Diego.
- Analysis: Stark, Antikickback, ethics.

Stark Analysis

- Does the device company bill Medicare or Medicaid for drugs prescribed by the physician?
  - Probably not. Most likely the billing is done by a hospital or some other entity, so Stark is inapplicable.

Antikickback Analysis

- Is there an argument that the device manufacturer is paying the physician to influence referrals paid for by a federal health care program?
  - Yes.

Antikickback Analysis

- What exactly is the physician being paid for?
- Why San Diego? Could the same thing be done in the physician's office? Via teleconference? In Ottumwa?
- "Live from the airport, for Fox Nine News."
- This is also where ethics creep in.

Intermediate Sanctions Analysis

The device company is a for-profit entity, so there is no issue.

State Law Analysis

- Antikickback statute.
- State disclosure laws.

Getting Concrete

A drug rep offers to pay a physician $200/hr. to listen to their explanation of why their drug is better.

Getting Concrete Walls

- A drug rep offers to pay a physician $200/hr to listen to their explanation of why their drug is better.
- Does a physician have a duty to learn about new developments in medical care?

Food, Fun and Friends

- An orthopod and a family practitioner are good friends. The ortho takes the family practitioner to the best restaurant in town to celebrate the family practitioner's birthday.
- The total bill is $350.

Food, Fun, Friends and Felony?

- An orthopod and a family practitioner are good friends. The ortho takes the family practitioner to the best restaurant in town to celebrate the family practitioner's birthday.
- The total bill is $100.
- The ortho submits the receipt to his clinic as a promotional expense.

The Therapator

A device company offers a free treadmill for prescribing their device 10 times each month. Their legal department writes that this is fine because the treadmill is intended to help patients rather than you and is therefore not considered a kickback.

The "Patient Care" Myth

- Perhaps the best test of whether something may be a kickback is whether it involves cash, a good or service that the practice would otherwise acquire.
- A gift of $500 is no different than a $500 piece of equipment, which is no different than a $500 "fellowship" to pay a nurse.

A deal too good to pass up?

You buy devices wholesale and bill insurers for them. The device manufacturer tells you, “if you buy 10, they cost $1,000 each. If you buy 100, they are yours for $800. For each one you buy after that, there is a $100 rebate.”

A deal too good to pass up?

- This deal will cause most people to blanch. But there is nothing wrong with it unless you:
  - Are paid on a cost basis AND
  - Fail to accurately state the price by disclosing the discount.

Scholarships

You want to train an RN on the latest device pump. A seminar in Orlando seems perfect. You ask the device company for a grant to pay for the RN's travel.

Scholarships

A trade group obtains 10 scholarships from drug companies to offer them to qualifying practices in rural areas.

Fellowships

A drug company offers to give you a $50,000 fellowship so you can hire a new PA.

Questions?

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