

# Professional Service Agreements

**Fredrikson & Byron, P.A.**  
Minneapolis, MN

Jim Platt, Esq.  
[jplatt@fredlaw.com](mailto:jplatt@fredlaw.com)  
(612) 492-7047

Katie Douglas, Esq.  
[kdouglas@fredlaw.com](mailto:kdouglas@fredlaw.com)  
(612) 492-7283

**Fredrikson**  
& BYRON, P.A.

# Professional Service Agreements

- What are they?
- Why do we use them?
- What are the critical terms?
- Which laws are relevant?

# What is a Professional Service Agreement?

- Agreement between two health care providers for the provision of medical services
- Examples:
  - Hospital/specialists
  - Primary care group/specialists
  - Hospital/physician group

# Why do we use Professional Service Agreements?

- Streamline the billing process
- Expand services to patients
- Greater flexibility and potentially lower costs

# Critical Terms

- Term
- Termination Rights
- Exclusivity
- Payment
- Noncompetition
- Nonsolicitation/No-hire Clauses
- Performance Standards

# Regulatory Issues

- Applicable Federal Laws
  1. Medicare Reassignment Rule
  2. Tax Exemption Laws
  3. Antikickback Statute
  4. Stark
- State Laws
- Other Tax Issues

# Medicare Reassignment

- Non-employee physician can reassign right to receive payment, as long as:
  - Joint and several liability
  - Access to billing records
- Remember to address meaningful use payments

# Tax Exemption

- Tax-exempt hospitals (or clinics) must operate exclusively for charitable purposes.
- IRS intermediate sanction rules create penalties for excess benefit transactions (overpayments) which apply to recipient and responsible persons.



# Tax Exempt Bonds

- Exclusive agreements or management agreements must meet requirements of IRS “permitted arrangements” rules
- If tax-exempt, bond-financed facilities are used
- Term restrictions apply

# 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 looks to intent, applying the “one purpose” test.

# Operation of the Antikickback Statute

- There are a number of “safe harbors.”
- You are not required to meet a safe harbor.
  - If you do not meet a safe harbor, a court/regulator will look to the facts and circumstances of the payment. Intent is everything.

# Antikickback Safe Harbor for Personal Services Agreements

- To fall within the safe harbor, the agreement must meet the following 7 requirements:
  1. In writing
  2. Covers all services to be provided
  3. If the services will be provided on a periodic, sporadic, or part-time basis, the agreement must specify exactly the schedule of such intervals, their precise length, and the exact charge for such intervals
  4. Term is at least one year
  5. Compensation is set in advance, consistent with FMV, and does not take into account referrals between the parties
  6. Agreement does not involve the promotion of illegal activity
  7. Services cannot exceed those reasonably necessary to accomplish legitimate business purpose

# Stark

- A physician may not make a referral to an entity for the furnishing of designated health services if the physician (or an immediate family member) has a financial relationship with the entity.
- An entity may not bill for designated health services furnished under a prohibited referral.
- Intent is irrelevant.
- Civil, not criminal

# “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

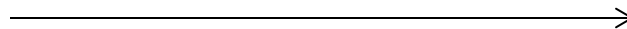
# Stark Analysis

- Is there a financial relationship?
  - If so, it must meet an exception
- Financial relationships: compensation or ownership, direct or indirect
- Stand in the shoes
- Consider “group practice” definition



Independent  
Contractor  
Physician

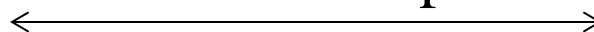
Order for DHS



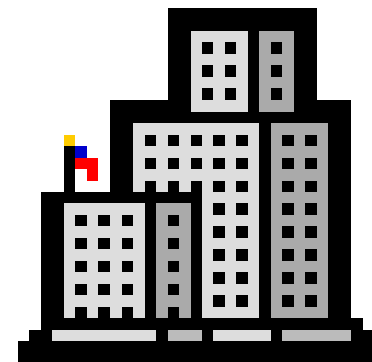
like lab, x-ray, therapy,  
hospital services

Financial

Relationship



Professional Service  
Agreement



Entity, such as  
clinic or  
hospital



# Stark Exception for Personal Service Arrangements

- Very similar to Antikickback Safe Harbor
- Must meet the following conditions:
  1. In writing
  2. Specifies and covers all services to be provided
  3. Term must be for at least one year
  4. Services cannot exceed those reasonable and necessary to achieve legitimate business purpose
  5. Compensation must be set in advance, not exceed FMV, and not take into account referrals between the parties
  6. Services cannot involve illegal activity

# Group Practice Definition

- In Office Ancillary Exception
- Must be a “group practice” – one requirement is that “substantially all of the patient care services of the physicians who are members of the group (that is, at least 75% of the total patient care services of the group practice members) must be furnished through the group and billed under a billing number assigned to the group, and the amounts received must be treated as receipts of the group. . . .” 42 CFR 411.352(d).

# Group Practice Definition

- “If the group’s business includes providing professional services to another entity, which, in turn, pays the group for those services, it is our view that these are services that should count as services a physician provides through the group. We are, therefore, interpreting the requirement that substantially all of a physician’s services be provided through the group and be billed “under a billing number assigned to the group” and amounts so received treated as receipts of the group to include any physicians’ professional services billed by a group under any group billing number regardless of the payer of the services, provided the receipts are treated as receipts of the group. In other words, the phrase “billed under a billing number assigned to the group” . . .does not refer exclusively to Medicare or Medicaid billing numbers.” 66 FR 905 (Jan. 4, 2001).

# State Laws

- Antikickback Laws
- Anti-Referral Laws
- Fee-Splitting Laws

# Questions?