Stark Prevention…A Practical Approach to Physician Transactions.

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Objectives

- A practical non-attorney discussion of Stark
- Discussion of processes that can be implemented at the facility to aid in preventing Stark violations
- Provide tools that can be used to aid in preventing Stark violations

2011 HCCA Compliance Institute
Recent Prosecutions/Settlements

- Condell Medical Center (IL), 2008 - $36 million
  - Physician arrangements
    - Leases of medical office space at rates below fair market value
    - Improper loans to physicians
    - Hospital reimbursement to doctors who performed patient services without required written agreements
  - Self-reported
Recent Prosecutions/Settlements

- U.S. ex rel. Moilan v. McAllen Hospitals (S.D. Texas 10/30/09)
  - $27.5 Million settlement for FCA, AKS and Stark violations
  - Between 1999-2006, alleged sham medical directorships and leases with referring physicians
  - $5.5 Million to the whistle-blower (former director of managed care)

Recent Prosecutions/Settlements

- U.S. ex rel. Reimche v. Tulare Local Healthcare District (C.D. Cal. 7/27/09)
  - Between 2001–2007, physicians had < FMV leases, purchased real estate at < FMV, and had debts forgiven
  - $2.4 Million settlement for FCA, AKS and Stark violations
  - Former CFO was the whistle-blower
Recent Prosecutions/Settlements

- Detroit Medical Center (12/30/10)
  - $30 Million settlement for FCA, AKS and Stark violations
  - Focus on Stark: > FMV physicians compensation, and leases not in writing, unsigned physician contracts, and physician perks (e.g., sports tickets) > $359/year limit
  - Substantial penalties for “technical” Stark violations
  - Detroit Medical Center voluntarily disclosed physician relationships

WHY

HHS Fiscal Year 2009

- $4 billion of investigative receivables
- Exclusion of 3,340 individuals and entities from Federal healthcare participation
- 647 criminal actions
- 378 civil actions
So What Does This Mean

Stark Law 42 U.S.C. Sec. 1395

- Prohibits physicians from making referrals
- For “Designated Health Services” payable by Medicare
- To an entity (such as a hospital) with which the physician (or an immediate family member) has a financial relationship
- Unless an exception applies
- Also prohibits the entity from billing for improperly referred services
### Stark Law “Designated Health Services”
(Partial List)

- Clinical Lab
- PT and OT
- Radiology and other imaging
- Radiation Therapy
- DME

- Parenteral and enteral items
- Prosthetics and orthotics
- Home health services
- Outpatient prescription drugs
- Inpatient and outpatient hospital services – not including separately reimbursed professional services

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### Changes in Stark Law

- The current version of the Stark law in effect since 1995
- Unlike the Medicare Anti-Kickback Statute, the Stark law is civil
- The parties’ intent is generally not relevant
- Exception if entity submitting claim did not know or deliberately ignore the identity of the referring physician
- Intent also relevant if compliance with AKS is required under a Stark exception or known filing of false claims alleged
Changes in Stark Law

- Penalties
  - Payment denial or recoupment
  - CMP of $15,000 per tainted service
  - $100,000 for “circumvention schemes”
  - Possible civil penalties under FCA
  - Exclusion from Medicare Program
- Compliance with Stark does not equal compliance with the AKS or State self-referral laws

Key Stark Law Exceptions

- Office Leases
  - In writing
  - Signed by parties
  - Specific premises covered
  - Term > or equal to 1 year
  - Space no more than needed
  - Used exclusively by lessee when used by lessee (except common areas)
- Rent set in advance and consistent with FMV
**Key Stark Law Exceptions**

- **Office Leases (Continued)**
  - Rent does not take into account referrals
  - Rent not based on percentage of revenue or billings of lessee or per unit of service if reflects services to patients lessor refers
  - Rent commercially reasonable even if no referrals
  - Hold over month-to-month OK for up to 6 months after expiration of term

**Key Stark Law Exceptions**

- **Personal Services Arrangements**
  - Covers remuneration to a physician (or immediate family member) for services
  - In writing
  - Signed by the parties
  - Specifies services covered (and, must render services)
  - 1 year minimum
  - Covers all services rendered by the physician, if multiple contracts must cross-reference each other or a master list
Key Stark Law Exceptions

- Personal Services Arrangements (Continued)
  - Services contracted for do not exceed what is necessary
  - Compensation is set in advance, does not exceed FMV, or reflect referrals
  - Services do not involve counseling or promoting illegal activities
  - Hold-over for up to 6 months following end of term

Key Stark Law Exceptions

- Bona Fide Employment Relationships
  - Covers amounts paid by employer to physician (or family member)
  - Must be a bona fide employment relationship
  - Employment is for identifiable services
  - Remuneration consistent with FMV and does not take into account referrals
  - Productivity bonus based on personally performed services OK
  - Remuneration would be commercially reasonable even if no referrals to employer
Changes in Stark Law

- In-Office Ancillary Services
  - IOAS exception permits self-referrals within medical groups
  - Effective January 1, 2011, new IOAS requirement for CT, MR and PET
  - Referring physician must inform patient in writing that he or she can obtain scan elsewhere and provide list of other suppliers
  - Must list ≥ 5 other suppliers within 25 miles of MD’s office
  - If < 5 other suppliers, must list them all
  - Hospitals are not suppliers

Top Excuses with Physician Arrangements

- We’ve always done it this way.
- The physician already has a contract for X services, so I figured I could pay him for Y services based on that.
- I assumed the old contract was still OK
- We had to get it done no matter what just to keep the physician happy or he would walk
- Other hospitals don’t make this physician sign a contract to provide these services
- I can’t tell Legal what to draft because I’m not sure why we’re paying the physician
- He is a physician who has saved lives for 20+ years here at ____, it is disrespectful to ask him to sign a piece of paper
Keys To Compliance

- Commitment of governance and senior management to compliance with physician transactions
- Structure and processes that create effective internal controls
- Regular auditing and monitoring and enhancement of existing physician transaction process

Credible independent validation of FMV
- Be sure MD contracts are in writing, signed, and not expired
- Rent and compensation must be set in advance
- Multiple personal services arrangements with same physician must cross reference each other
- Ensure not to exceed annual MD non-monetary compensation limit ($359)
Keys To Compliance

- Update agreements if services, space or compensation changes
- Regularly review MD contracts for Stark and AKS compliance
- Develop policies and procedures to timely report and refund identified over payments because of physician transaction issues

Compliance Review– MD Transactions

- Medical Director Agreements
- Call Coverage
- Payments for Hospital Committees such as ERH, IRB, etc.
- Preceptor Agreements for Residents
- Leasing Agreements
- Physician Services
- Income Guarantees
- Indigent Care Payments
- Honorarium
- Staff/Support Agreement
- Medical Staff Leadership
- Laser Rental
Compliance Review: – Beginning

- Review Accounts Payable for payments to physicians
- Review Accounts Receivable for payments from physicians
- Review payroll for payments to physicians

- Comparison of payment with contract and supporting documentation
- Review contracts/leases to ensure they are up to date and payments are correct

Compliance Review

1. Reviewing payments to/from physicians
   - Is there a valid K?
   - Sufficient supporting documentation?
   - Check request calculated correctly?
   - Are services performed covered under the contract & FMV commercial reasonable?
   - Is payment request for the correct time period?
   - If there is a cap on payments, is it within cap amounts?

2. Enforcing existing contracts
   - Ensure that payment to employed physician is correct
     - Is the rate correct?
     - Are there other payments and are they correct per the contract?
     - If Productivity Bonus, is it correctly calculated?

3. Maintain Lease Payments, Other Receivables and Ensure Collection of Rent
   - Are lease amounts collected timely?
   - Are they for the correct amount?
   - CPI increases enforced?
Case Study – Compliance Review

4. Ensure that Physicians with Income Guarantees are Correct
   - Are expenses sufficiently documented?
   - Is the revenue correctly accounted for?
   - Are they incremental expenses only?

5. Review Embedded Physician Agreements
   - Are expenses sufficiently documented?
   - Is the revenue correctly accounted for?

6. Physician Gift Accumulator
   - Is everything properly recorded?
   - Did they exceed the limit?
   - 150% or less?

To Track or Not to Track

- Track the following:
  - Gifts given at Doctor’s Day
  - Birthday Gifts
  - Flowers to a physician on the birth of baby, death of family member, anniversary, etc.
  - Golf outings, baseball/football/basketball tickets
  - Lunches

- Reminder:
  - Each hospital has its own dollar limit
  - Limit for 2011 is $359
  - Stark Regulations require that we must ask for repayment if we exceed the $359 limit up to 150% and we can not bill for any ordered services after we exceed that limit
  - Tracking is not required when gift/meal on campus and under $30 in value (incidental benefit)
  - Gift Certificates are prohibited
Must Track

- Tickets to events such as golf, performing arts at the full FMV of the ticket—not the discounted rate paid by the Hospital.
  - If spouse/immediate family member attends as well, the cost of the ticket is either counted on the “gift accumulator” or paid by the physician
- Lunches taken to the physician’s office to discuss new services or departmental business
- Physician Liaison Staff or Hospital Executives take existing local Physician who is not a member of the hospital staff to meal offsite of hospital to discuss potential new business with Hospital or Joint Venture
  - Exception for Recruitment is only applicable for physician new to the community
- Hospital give tickets to physician for charitable events that benefits Hospital medical services/programs. (Record full FMV)
- Physician receptions or gathering off campus, other than the one “annual” event.

Do Not Track

- Physician Liaison Staff or Hospital Executives take employed Physician or employed physician staff (W-2 employees) to lunch off site of Hospital to discuss departmental business or new service.
  - However, must fall under Travel and Business Expense Reimbursement
- If you pick up the expense personally such as baking cookies, sending flowers, picking up lunch expenses. If not an expense of hospital, do not track.
- Meals provided in Hospital Cafeteria or Physician Lounge (incidental benefit).
- Meals given along with Board Meetings or Committee Meetings provided in the facility or modest meals offsite offered to all involved.
**Education**

**Management**

- Responsible for contracts
- Responsible for all check requests
- Must understand their contracts
- Gift givers
- Responsible for tracking against any caps

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**Operationalizing Stark Compliance**

**Contracts Manager**

- Front to back end control
- No work without signed contract
- All signatures and dates
- 60, 90, 120 day reports
- Payment processing
- Supporting documentation
Operationalizing Stark Compliance

- Develop Specific Check Request Forms for Physician Payments
  - Accounts Payable
  - Time Sheet
  - Payroll
  - Call Schedules

Questions