

Physician Arrangements

Conducting the Audit & Ensuring a Resolution

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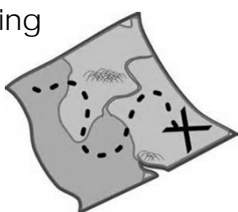
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Officer, Presence Health

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Physician Arrangements


Road Map

- Why spend valuable resources auditing Physician Arrangements?
- What data to gather in developing the question sets.
- Conduct a mock audit of a Medical Directorship.
- Define and interpret audit findings.
- How to report results to management and legal effectively.
- Distinguish roles of compliance officer and legal counsel during corrective action.



2

<p>"Failure to structure physician contracts to comply with Stark and Anti-Kickback Statutes can easily result in seven-digit fines and repayments. Such violations can also adversely affect the status of tax-exempt entities. If you have not done so recently, <u>now</u> is time to audit your physician contracts to ensure compliance."</p> <p>-Hawley Troxell, posted in <u>Health Law</u> 1992</p>	<p>Physician Arrangements</p> <h2>Just the Facts...</h2>	<p>3</p>
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	<p>Physician Arrangements</p> <h2>1. Why spend valuable resources auditing Physician Arrangements?</h2>	<p>4</p>
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Why? It's the Law

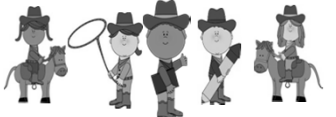
- **Physician Self-Referral Law ("Stark")**
 - Physician may not refer patients nor bill Medicare unless arrangement fits within a regulatory safe harbor.
- **Anti Kickback Statute**
 - A criminal law that prohibits the knowing and willful payment of "remuneration" to induce or reward patient referrals
- **False Claims Act**
 - It is illegal to submit claims for payment to Medicare or Medicaid that you know or should know are false or fraudulent.

5


Why? Save Yourself from Trouble

- **Anti Kickback Statute Penalties**
- **Stark Penalties**
- **False Claims Act Penalties**
- **Mitigating Provider Liability**
 - Refund overpayments
 - Whistleblowers
- **The Regulatory Climate**
 - Increases in Government Enforcement
 - Allegation that Compensation is not Fair Market Value, not Commercially Reasonable, and that Compensation Takes into Account Referrals

6

 <p>...Get your <u>posse</u> together.</p> <p><u>P</u>lan <u>O</u>ccurrence <u>S</u>cope of Payments <u>S</u>ample Size <u>E</u>ndorsement</p>	<p>Physician Arrangements</p> <p>First Things First!</p>
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7

<p><u>P</u>lan <u>O</u>ccurrence <u>S</u>cope <u>S</u>ample <u>E</u>ndorsement</p> <ul style="list-style-type: none"> o Create Formalized Plan <ul style="list-style-type: none"> o Who is accountable? o Use SMART Goals o Decide How Often? <ul style="list-style-type: none"> o Monthly, Quarterly, Semi-annually, it's your choice! o Have a routine in which there is an even flow o Layout Scope of Payments o Determine your Sample Size and Method o Get backing from Legal, AP, Governing Body 	<p>Physician Arrangements</p>
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8

Types of Physician Agreements

- Call Coverage
- Chairperson
- **Medical Director**
- Employment
- Leases
- Honorariums
- Teaching
- Income Guarantees
- Subsidy/Stipends
- Clinical Services
- Management & Billing

9



1. Gathering the data and developing the question sets

10

Gathering Data

- Physician Contract List w/in-house Responsibilities
- Actual Contract
 - schedule describing service
- Detailed List of Physician Payments
 - Date paid
 - Amount paid and or requested
 - Services rendered
- Company Crosswalk Chart
- Physician Call/Time Sheets or Attestations
 - Physicians signature
 - Approver's signature
- List of Fair Market Values
 - company's appropriate productivity-based compensation formula or benchmark surveys

11

Question Sets


Does the agreement comply with the averages for services performed by other MDs of the same specialty for the Hospital?

Does the agreement specify the amount of Physician compensation?	Is there a properly signed agreement specifying services?	Does the agreement replace the pre-existing agreement?	
Does the compensation structure measure the volume or value of the physician's referrals?		Does the agreement incorporate or otherwise reference other agreement between hospital and physician?	
Is there evidence of FMV determination?	Did the appropriate authorizing parties sign?	Is the agreement currently effective?	Is the term of the agreement for at least 1 year?

12

Physician Arrangements

Contract Database/Spreadsheet




Google Spreadsheet

Excel

Access

13

Physician Arrangements



2. Setting up Regulatory Matters to match Audit Questions

14

Medical Directorship

Stark Law Requirement

- Arrangement is set out in writing, is signed by the parties, and specifies the services covered.

Audit Question

- Is there a properly signed agreement specifying the services to be performed?

15

Scope of Services

Stark Law Requirement

- The arrangement covers all of the services to be furnished by the physician to the entity.

Audit Question

- Does the agreement incorporate or otherwise reference other agreements between Hospital and Physician?

16

Reasonable & Necessary Test

Stark Law Requirement

- The aggregate services covered by the arrangement do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement.

Audit Question

- Does the agreement comply with the averages for services performed by other *Medical Directors* of the same specialty for the Hospital?

17

Time Frame

Stark Law Requirement


- The duration of each agreement is at least 1 year.
- If terminated within the first year, was another agreement entered into?

Audit Question

- Is the term of the agreement for at least 1 year?
- Does this agreement replace a pre-existing agreement?

18

Physician Arrangements	
<h2>3-Prong Compensation Test</h2>	
Stark Law Requirement The compensation to be paid over the term of each arrangement: <ul style="list-style-type: none"> • is <u>set in advance</u>; • does not exceed <u>FMV</u>; and • does not take into account the <u>volume or value of any referrals</u> or other business generated between the parties. 	Audit Question <ul style="list-style-type: none"> • Does the agreement specify the amount of Physician compensation? • Is there evidence of FMV determination? • Does the compensation structure measure the volume or value of the Physician's referrals?
19	

Physician Arrangements	
 <p>Can you spot all of the issues in this mock arrangement?</p>	<h3>3. Conducting the Mock Audit</h3>
20	

Physician Arrangements

The Payment

- A check of your AP system populates this timesheet and corresponding payment data

Physician Medical Director Services Log Sheet

Month/Year: October 2016 Physician Name: Bob Smart

Date	Activity	Duration	Physician Signature
10/4	Review P+Ps	1.0 hr	
10/5	Meet w/ Nurse Mgr	.5 hr	
10/11	Chair Bst Comm	1.0 hr	
10/13	Attend IG Comm	1.0 hr	
10/20	Resident Education	.5 hr	
10/25	US and Quality Chart	1.5 hr	
Total = 5.5 hrs			
Total = \$225 x 5.5 hrs = \$1237.50			

TIMESHEETS ARE DUE BY THE END OF EACH MONTH FOR TIMELY PAYMENT

I certify that I personally performed all work indicated on this log sheet.

Physician Signature: Bob Smart Date: 10-31-16

I have validated the accuracy of the services indicated on this sheet and approve payment to the above named physician for the amount indicated.

CEO/CMO/CO Signature: Darryl Snow Date: 11-2-16

Payment Date:	11/15/16		
Payee:	Bob Smart, MD	Address:	3456 Merryville Lane
GL Unit:	10010		Anytown, USA 10001
Memo:	Behavioral Health Oct 16	Amount:	\$1237.50

21

Physician Arrangements

Properly Executed Agreement

- Is there a properly signed agreement specifying the services to be performed?

INDEPENDENT CONTRACTOR

PROFESSIONAL MEDICAL SERVICES AGREEMENT

EXECUTION IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date the last party to this Agreement executes it, being the Effective Date:

SMALL TOWN HOSPITAL

By: [Signature]

Name: Eddie Executive

Title: CEO

Date: 3/27/2017

MEDICAL DIRECTOR

By: [Signature]

Name: Bob Smart

Title: Medical Director of Obstetrics and Gynecology Services

Date: _____

22

Other Business Relationships

- Does the agreement incorporate or otherwise reference other agreements between Hospital and Physician?

8. **Other Business Relations.** Any prior-existing agreements between Physician and Hospital are listed herein in Exhibit C to this Agreement. Such agreements are hereby incorporated by reference into this Agreement between Hospital and Physician.

23

Commercial Reasonableness & Business Justification

- Does the agreement fall within the medium of services performed by other Medical Directors of the same specialty for the Hospital?

Physician's invoiced time for services performed under this Agreement shall not exceed 15 hours monthly.

24

Duration

- Is the term of the agreement for at least 1 year?

a. **Term.** This Agreement shall begin on August 1st, 2016 and will continue until terminated as provided in this Agreement.

10. **Termination and Non-Compete.** Written notice of intention to terminate this Agreement must be served upon the Hospital at least one (1) month prior to termination date. Upon termination of this Agreement, Physician will not practice in Hospital's Primary Service Area as a Medical Director for a period of at least two years.

25

Pre-existing Agreement

- Does this agreement replace a pre-existing agreement?

Does the current agreement:

- Replace another one within the first year (for the same or similar services)?
- Overlap with an agreement currently in effect?
- Specifically mention that it replaces another agreement?

You may have to do some digging! Check your central contract repository.



26

Compensation

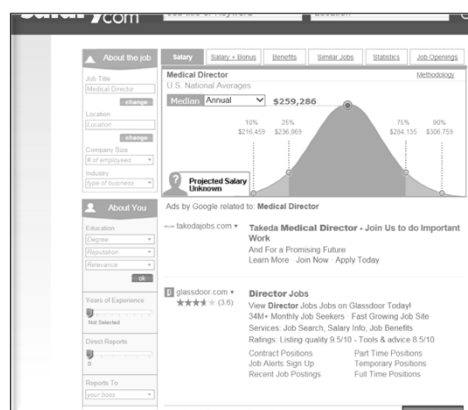
- Does the agreement specify the amount of Physician compensation?
- Does the compensation structure measure the volume or value of the Physician's referrals?

2. **Compensation for Services Rendered.** Hospital will compensate Physician an hourly rate of \$225.00 for services performed under this Agreement. Physician's hourly rate has been determined the fair market value for services rendered under this Agreement by professionals in the Physician's Specialty. Physician shall complete a Hospital approved timesheet monthly for services performed using the timesheet included herein as Exhibit A and submit it for payment and processing no later than the 5th day of the month following services.

27

Fair Market Value Analysis

- Is there evidence of FMV determination?



28

Organization Specific

- Did the appropriate authorizing parties sign the agreement?
- Is the agreement currently effective?

What are your organizations priorities about physician contracts?

These would make great audit questions!

29


Documenting Findings

The screenshot displays a web-based form titled "Physician Arrangements Question Set". At the top, there is a header bar with the "Small Town Health System" logo and a "Main Menu" button. Below the header, there is a navigation bar with tabs for "Region", "Review Period", "Contract Number", "Medical Unit", "Type", and "Service Period". The main content area is titled "Focusing on the Physician Agreement:" and contains a list of 10 questions, each with a "Yes/No" column and a "Please provide supporting information below:" column. The questions are as follows:

1. Is there a properly signed agreement specifying the services to be performed?
2. Does the agreement incorporate or otherwise reference other agreements between hospital and physician?
3. Does the agreement comply with laws for services performed by other MD of the same specialty for the H?
4. Is the term of the agreement for at least 1 year?
5. Does this agreement replace the pre-existing agreement?
6. Does the agreement specify the amount of Physician compensation?
7. Does the compensation structure measure the volume or value of the physician's referrals?
8. Is there evidence of FMV determination?
9. Did the appropriate authorizing parties sign the agreement?
10. Is the agreement currently effective?

At the bottom of the form, there is a "Continue" button. The form also includes a "Legal Review?" column on the right side of the questions.

30

	Physician Arrangements
	<p>4. Reporting results to management and legal effectively</p>
	31

Physician Arrangements
<h2>The Value of Knowing Your Leaders to Ensure a Resolution</h2> <ul style="list-style-type: none"> • Results from these audits can be humbling for many in leadership. • Present your findings in the way your leader will best perceive the information as an opportunity, rather than an attack. • Use graphs and be prepared to show cause of why the audit & its questions were structured that way.
32

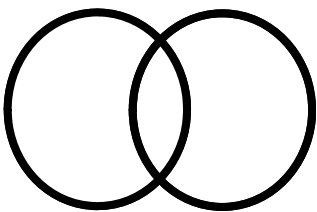
Physician Arrangements

Score Sheet

Small Town Hospital		Physician Arrangement Monitoring Score Sheet																Q3 2016	
Contract Number	Physician	Written Agreement	Employment Agreement	Contract Correct	Signed By All	Signed In Time	Contract Age > 3 years	> 1 Year Term	Payment Correct	Timeliness Adequate	MT Request Approval	Legal Services	FMV MT	FMV MT	MT Res Parties	BAA MT	BAA MT	EOC	%
12345	Bob Smart	Yes	No	No	No	No	Yes	Yes	No	No	No	Yes	No	No	Yes	No	N/A	Yes	80%
	Score:	20	10	0	0	0	10	10	0	0	0	10	5	10	10	10	10	10	
12346	Bill Dumb	Yes	No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No	Yes	No	No	Yes	No	Yes	90%
	Score:	20	10	15	10	0	10	10	10	10	10	5	10	10	10	10	10	10	
12347	Jim Kats	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	N/A	No	No	N/A	90%
	Score:	20	10	15	10	10	10	10	10	10	0	10	10	10	10	10	10	10	
12348	Ann Hope	Yes	No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes	N/A	N/A	No	No	N/A	90%
	Score:	20	10	15	10	10	10	10	10	10	0	10	10	10	10	10	10	10	
12310	Ed Worng	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	No	100%
	Score:	20	10	15	10	10	10	10	10	10	10	10	10	10	10	10	10	10	
12321	Karen No	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes
	Score:	20	10	15	10	10	10	10	10	0	10	10	10	10	10	10	10	10	
Jack Soratt Medical Center																			
Contract Number	Physician	Written Agreement	Employment Agreement	Contract Correct	Signed By All	Signed In Time	Contract Age > 3 years	> 1 Year Term	Payment Correct	Timeliness Adequate	MT Request Approval	Legal Services	FMV MT	FMV MT	MT Res Parties	BAA MT	BAA MT	EOC	%
12123	Gris Duffv	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes	No	N/A
	Score:	20	10	15	10	10	10	10	10	0	10	10	10	10	10	10	10	10	
12987	Sally Duck	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No	Yes	Yes	No	Yes
	Score:	20	10	15	10	10	10	10	10	10	10	10	10	10	10	10	10	10	
12258	Anna Fane	Yes	No	No	No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	No	No	Yes	Yes	No	Yes
	Score:	20	10	0	0	0	10	10	10	10	10	10	10	10	10	10	10	10	
12391	Lenny Ball	Yes	No	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes	No	No	Yes	No	N/A	Yes
	Score:	20	10	15	10	10	10	10	10	0	10	10	10	10	10	10	10	10	

33

33

		Physician Arrangements																			
		<div> <div>  </div> </div>																			
		<div> <div> <div>5. Distinguishing roles of compliance officer and legal counsel during corrective action</div> </div> </div>																			

34

Compliance Officer & Legal Counsel Relations 101

- The lines between legal counsel and compliance officer can often be blurred without a thorough and formal understanding of the job duties of each.
- Be cautious and refrain from offering legal advice related to the functionality of the agreement.
- Regardless of reporting relationship, don't underestimate the importance of having the support of your General Counsel.
- Legal Counsel should prioritize these efforts based on the governments scrutiny of this area of enforcement.

35

Questions & Discussion



36

Contact Info

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