

# Physician Arrangements

## Conducting the Audit & Ensuring a Resolution

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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.



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Physician Arrangements

"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, **now is time to audit your physician contracts** to ensure compliance."

-Hawley Troxell, posted in [Health Law](#) 1992

# Just the Facts...

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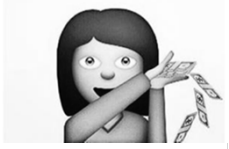
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Physician Arrangements

### 1. Why spend valuable resources auditing Physician Arrangements?

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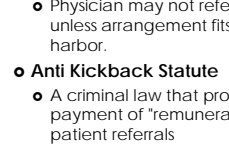
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Physician Arrangements

### 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.

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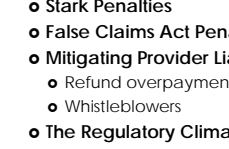
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Physician Arrangements

### 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

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...Get your posse together.

**P**lan  
**O**ccurrence  
**S**cope of Payments  
**S**ample Size  
**E**ndorsement

Physician Arrangements

First Things First!

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Physician Arrangements

**P**lan **O**ccurrence **S**cope **S**ample **E**ndorsement

- o Create Formalized Plan
  - o Who is accountable?
  - o Use SMART Goals
- o Decide How Often?
  - 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





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Physician Arrangements

Types of Physician Agreements

- o Call Coverage
- o Chairperson
- o ***Medical Director***
- o Employment
- o Leases
- o Honorariums

- o Teaching
- o Income Guarantees
- o Subsidy/Stipends
- o Clinical Services
- o Management & Billing

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Physician Arrangements

1. Gathering the data and developing the question sets

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Physician Arrangements

### 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

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Physician Arrangements

### 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?

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Physician Arrangements

## Contract Database/Spreadsheet



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Physician Arrangements



2. Setting up Regulatory Matters to match Audit Questions

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Physician Arrangements

## 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?

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Physician Arrangements

## 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?

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Physician Arrangements

## 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?

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Physician Arrangements

## 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?

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Physician Arrangements

## 3-Prong Compensation Test

**Stark Law Requirement**

The compensation to be paid over the term of each arrangement:

- is **set in advance**;
- does not exceed **FMV**; and
- does not take into account the volume or value of any referrals or other business generated between the parties.

**Audit Question**

- 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?

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## 3. Conducting the Mock Audit

Can you spot all of the issues in this mock arrangement?

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Physician Arrangements

## The Payment

- A check of your AP system populates this timesheet



Payment Date: 11/15/16

Payee: Bob Smart, MD      Address: 3456 Merryville Lane

GT Unit: 10010      Anytown, USA 10001

Memo: Behavioral Health Oct 16      Amount: \$1237.50

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## 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: John J. Smith  
 Title: CEO  
 Date: 2/27/2017

**MEDICAL DIRECTOR**  
 By: [Signature]  
 Name: John J. Smith  
 Title: Medical Director of Obstetrics and Gynecology Services  
 Date: \_\_\_\_\_

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Physician Arrangements

## 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.

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Physician Arrangements

## 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.

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Physician Arrangements

## 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 or a Medford Division for a period of at least two years.

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Physician Arrangements

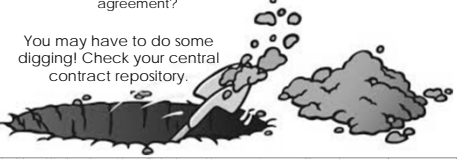
## Pre-existing Agreement

- 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.



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Physician Arrangements

## Compensation

- Does the agreement specify the amount of Physician compensation?

2. **Compensation for Services Rendered.** Hospital will compensate Physician on hourly rate of \$225 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 not later than the 15th day of the month following services.

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

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Physician Arrangements

### 4. Reporting results to management and legal effectively

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Physician Arrangements

### The Value of Knowing Your Leaders to Ensure a Resolution

- 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.

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Physician Arrangements

### Score Sheet

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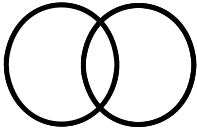
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Physician Arrangements



5. Distinguishing roles of compliance officer and legal counsel during corrective action

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Physician Arrangements

### 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.

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Physician Arrangements

### Questions & Discussion



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Physician Arrangements

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- Anne Brummell, Regional Compliance Officer
  - [anne.brummell@presencehealth.org](mailto:anne.brummell@presencehealth.org)
  - Office: 773.665.3268

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