

*HCCA's 2021 Compliance Institute*

## **Get Your Docs in a Row with a Physician Contracting Compliance Policy**



1

## **Disclaimer**

The information provided in this presentation does not, and is not intended to, constitute legal advice; instead, all information, content, and materials are for general informational purposes only. Information in this presentation does not constitute the most up-to-date legal or other information.

You should contact your attorney to obtain advice with respect to any legal matter. Only your attorney can provide assurances that the information contained herein – and your interpretation of it – is applicable or appropriate to your situation.

The views expressed in this presentation those of the individual presenters in their individual capacities only – not those of their respective employers. All liability with respect to actions taken or not taken based on the contents of this presentation are hereby expressly disclaimed.

2

## Your Speakers



**Allison Pullins**

VP, Chief Strategy and Operating Officer



**Robert Abraham**

Contract Administrator, Valley Presbyterian Hospital

3

3



### Line 'em up!



Every hospital, large and small, has non-employed physician agreements. These arrangements contain numerous subtle compliance risks that may not be obvious; furthermore, the risks of violating Stark Law are too great to ignore. Clear and effective compliance policies for physician arrangements are vital.

While having a policy that works for your organization is important, **you don't need to reinvent the wheel**; we will take you through a straightforward approach to crafting guidelines for physician contract compliance

Learn how to thoughtfully design simple and straightforward compliance policies, evaluate commercial reasonableness, determine FMV without overusing consultants, mitigate the risks from overpayments, engage key stakeholders, and translate best practice into policy

4

4



## Our agenda

- 1 Background and context**  
Review legal and compliance considerations while planning your policy
- 2 Crafting your policy**  
Review the components of effective physician contracting programs; learn best practices for creating and executing guidelines
- 3 Applying lessons in the real world**  
Learn best practices (and also mistakes not to make) while operationalizing your policy, especially when it comes to managing and work with teams

5

5

## Background and Context

Important compliance and legal considerations before designing your physician contracting policy



6

6

## Federal guidelines regulate physician transactions

Physician contractual arrangements differ from other industries.

Healthcare organizations in financial relationships with physicians must comply with federal and state laws.

### Key Regulations:

- Anti-Kickback Statute (AKS)
- Stark Law
- False Claims Act (FCA)

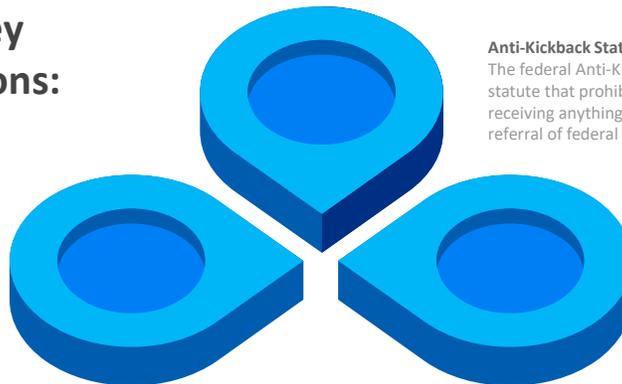


7

## Protecting against fraud

### Three key regulations:

**Physician Self-Referral Law**  
Prohibits referrals for the provision of "designated health services" from physicians to health care providers with which they have financial relationships unless an exception applies.



### Anti-Kickback Statute

The federal Anti-Kickback Statute is a criminal statute that prohibits offering, soliciting, or receiving anything of value to induce or reward the referral of federal health care program business

### False Claims Act

Prohibits the knowing submission of false claims, using false records to support those claims, the retention of money belonging to the US government. **BONUS:** Claims made under arrangements that violate Stark or AKS are subject to the FCA

8

8

## Stark updates: COVID + blanket waivers

Issued March 30, 2020, retro to March 1, 2020, they are in effect under a state of national emergency.

Blanket waivers are intended to allow providers to act quickly to respond to the pandemic and related to COVID-19 purposes; *the vast majority of Stark remains intact.*

Most likely waivers used during this time:

- ✓ Arrangements can start prior to writing and signature
- ✓ Payments could be below or above FMV
- ✓ Incidental payment and non-monetary compensation caps waived
- ✓ Free services can be provided (e.g., childcare, clothing, meals)
- ✓ Office space or equipment rentals paid to or by a physician at or below FMV

**New arrangements or amendment payments must be solely related to COVID-19 and are only in effect if we are in a state of emergency. Arrangements must have a limited timeframe and scope.**



9

9

## Revised and clarified Stark regulations: effective Jan. 2021

- New value-based exceptions
- New exception to limited remuneration
- New cybersecurity and related services exception
- **New "commercial reasonableness" definition/clarification**
- New objective tests to volume or value standard
- Revisions to indirect compensation definition
- **Revisions and clarifications to the FMV and general market value definitions**
- Revisions to the group practices provisions
- **Removal of period of disallowance provisions**
- Revisions to the special rules on compensation
- Revised patient choice and directed referrals provision
- Clarification of the rental of office space exception
- Revisions to the FMV exception for leases
- Revisions to the EHR exception



10



11

## Key elements of physician contract policies

 <b>Compliance Management</b> <p>Create a process for determining and documenting FMV and commercial reasonableness. Conduct regular audits.</p>	 <b>Financial Management</b> <p>Is the target market range for comp realistic for your organization? How much money are you investing in physicians?</p>	 <b>Contract Management</b> <p>Have an agreement for all arrangements. Keep your contract organized and accessible. Craft a "renewal process" that keeps all parties on track.</p>
---	---	---

12

12

## Key elements continued



### Executive Oversight

Designate an executive to take responsibility for physician arrangements. Involve your compliance committee.



### Determining FMV

Your policy should define how your organization will go about the FMV determination and documentation process.

13

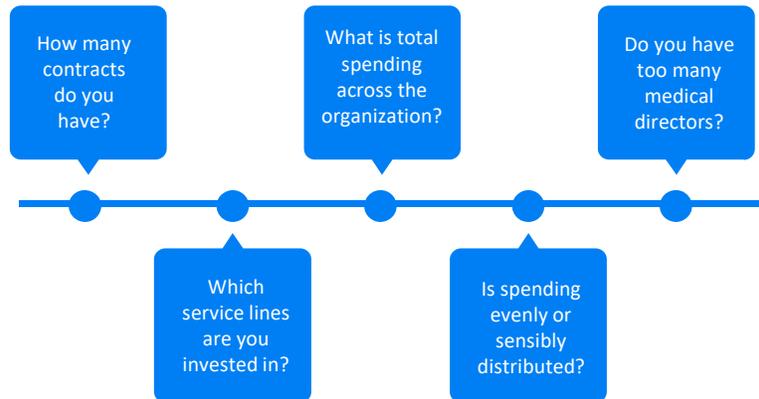
13

**The goals of your physician contract policy should be to avoid regulatory violations, ensure that every arrangement meets FMV standards, reasonably controls costs, monitors risky arrangements, and includes regular auditing to ensure adherence to guidelines.**

14

14

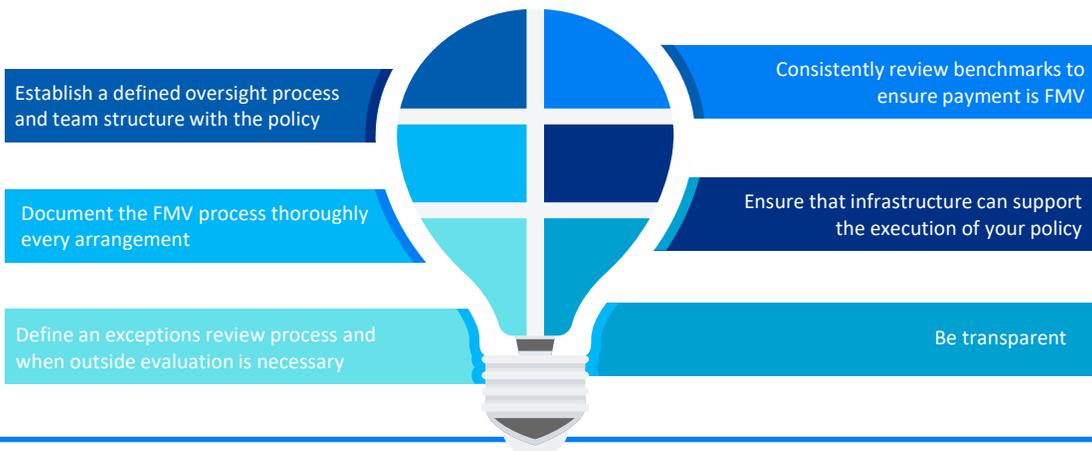
## Understand the financial scope of your arrangements



15

15

## Tried and true principles



16

## Effective policies *must* have:

- Clear, simple guidelines and procedures to streamline physician agreements and mitigate risk
- Step by step process for negotiation and approval that involves not only the executive team, but ideally legal and compliance too
- Consistent use of standardized, objective benchmarks
- Guidelines for dealing with outlying transactions, based on both dollar thresholds and market ranges
- Routine schedule for reviewing and monitoring all agreements
- Awareness of overall spend
- Consistent documentation of commercial reasonableness and FMV
- Identification and monitoring of all high-risk arrangements

17

## A sample policy for the FMV process

- All arrangements must have a complete job description with payments and services clearly outlined. All medical directorships must stipulate hours per month.
- Commercial reasonableness assessment/justification of position and payment must be assessed.
- Is the arrangement at or below median compensation per market survey data? If yes, it is determined as meeting FMV requirements.
- If payment falls between the median and 75th, additional documentation is needed (additional survey data, a valuation, etc.).
- If payment falls above the 75th percentile, a valuation or FMV opinion must be sought, or the cost method used.
- All documentation must be filed with a signed copy of the agreement and stored in the contract management system.

18

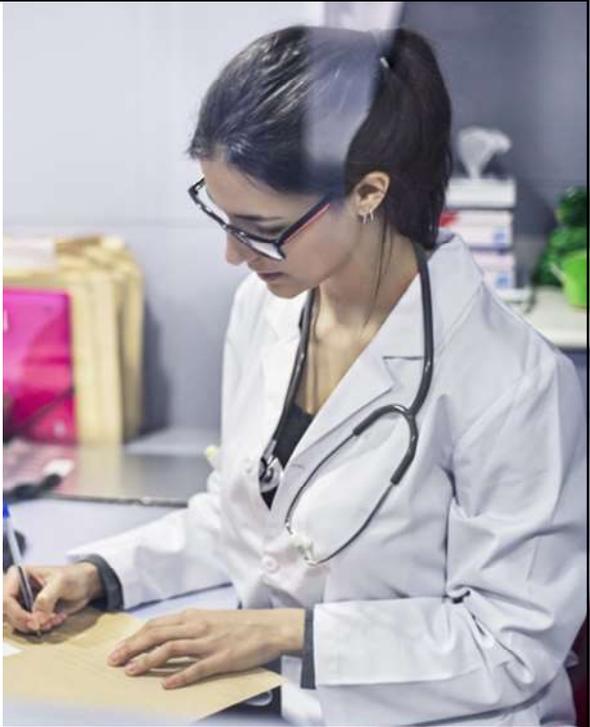


**Process Management: Best Practices for Operationalizing your Policy**

19

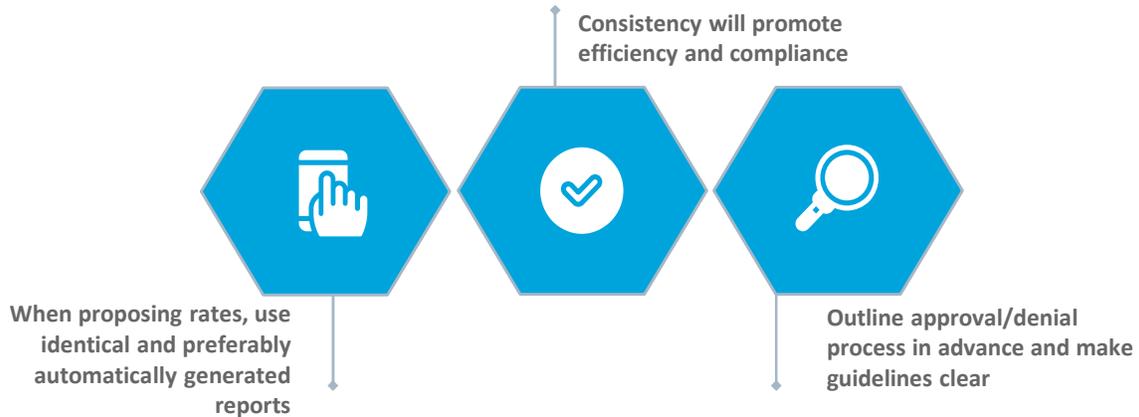
**Consistently set rates with a defined FMV process**

- The FMV process is perhaps the most important part of your physician contract policy
- Consider cost, efficiency, and the realities of your organization
- How many contracts will you set rates for, and how complex are they?
- What is most realistic for your organization? Consider scale.
- What should be the acceptable range of pay? What is the upper limit?

A female doctor with dark hair tied back, wearing glasses and a white lab coat with a stethoscope, is sitting at a desk and writing on a document with a pen. The background shows a typical office or clinic setting with shelves and a pink bag.

20

## Create streamlined FMV proposals



21

21

## Handle renewals systematically

- Automate the FMV process as much as possible
- Designate roles within your organization for contract renewal. You'll need:
  - A new contract (or update current agreement with new dates)
  - Checking the rate and potentially designating a new rate



22

## Handle exceptions through policies and *process*

---

What are the upper limits for setting an exception rate?

Who approves the exception?

What documentation is needed?

Might you consider design policy to discourage exceptions in the first place?

23

23

## Use a contract management system

---

- Many options exist
- Determine must-have and nice-to-have features
- What level of customization do you need?
- Do you need your contracts scanned and imported?
- What other add-ons or features might you need (e.g., physician time-tracking)



24

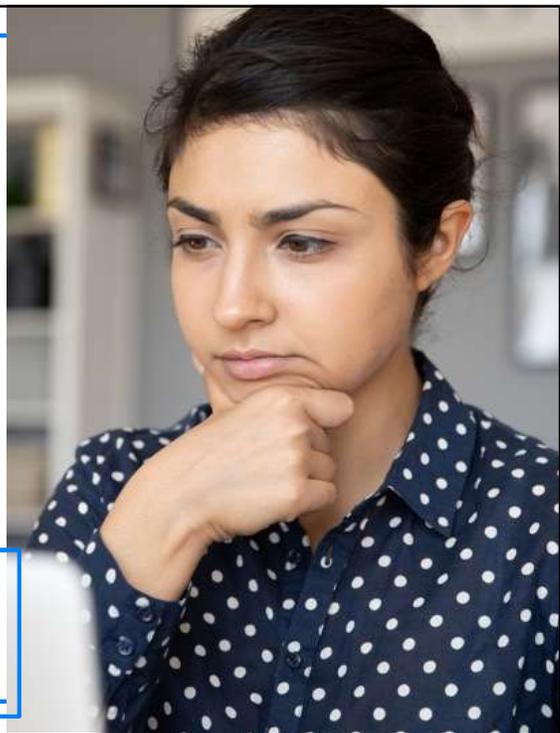
**Your contract management system is only as good as you make it.**

25

25

### **Always flag risky agreements**

- Don't get caught just weeks before a complex contract expires, particularly risky ones
- Have multiple arrangements with the same doctor? Consider payments in aggregate to avoid problems with "stacking" agreements.



26

## Delegate responsibilities clearly



Contract negotiations take multiple steps



Everyone on your team should know their role



Hold your team, and yourself, accountable



Consider quarterly check ins on all contracts coming up for renewal

27

27

## Hold quarterly or bi-annual contract reviews



### PLAN

Send agenda in advance; set expectations of attendees



### REVISIT

Assure accountability by recapping last meeting's minutes



### EXECUTE

End every meeting with key takeaways and next steps

28

28

## Keep records and notes

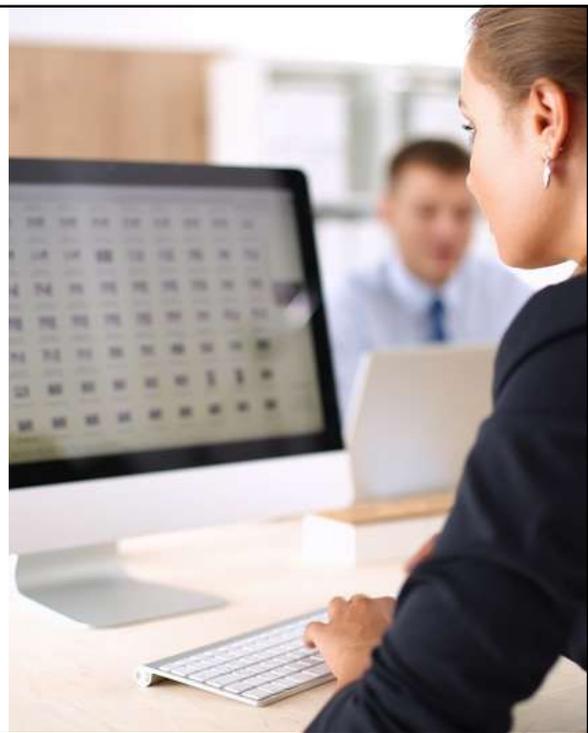
- Use your contract management system to its fullest potential and add notes and records as soon as they are available
- Office communication tools record conversations, next steps, follow up, and can remind team members of to dos



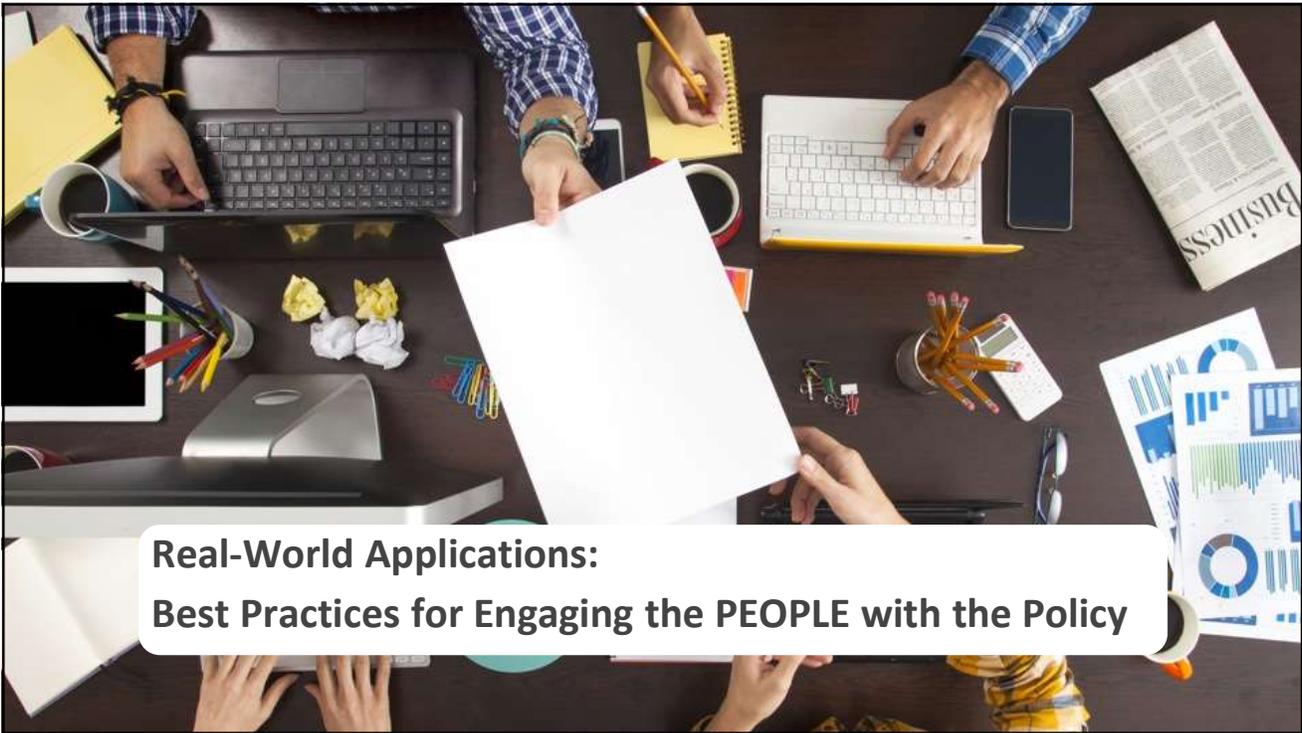
29

## Use technology to facilitate communication and automation

- Distribute policies, guidelines, benchmarks, and all necessary resources to those at your organization who need it
- Make all resources available online so that your team can access documents, benchmarks, and more at their fingertips from any location



30



31

**ENGAGE STAKEHOLDERS!**

Plan and systematize all you like: the people  
executing policies determine their fate

32

## Culture matters.

---

What's your organization's risk tolerance?

Are you a top-down management structure? Do you have strong leadership in place?

How healthy are your physician relationships?

How fast does your organization adopt to change?

33

33

## Get feedback early and often

---

Develop guidelines with buy-in from key stakeholders.

Executives aren't the only ones with skin in the game; remember the team members who work with contracts daily.



34

34

## Over-communicate

---



Ensure everyone involved in the FMV process, including physicians, understands your policy and guidelines.



Hold regular, frequent regulatory and compliance trainings.

Review policy and guidelines regularly to both entrench in the organization and to determine if they are indeed effective.

If you feel you are overcommunicating your policy and FMV process, you are likely doing things right.

35

35

## Avoid poor communication at all costs

---

- Think about how what you are about to say or write will sound during a deposition. If it doesn't sound great, don't say it.
- Emails are forever.
- Board meeting minutes are on the record. Always think before you speak.

36

36

## Summary of key takeaways



Develop a policy with stakeholder buy-in



Ensure the policy and procedures fit within your organization's culture



Ensure guidelines are clear, simple, realistic, and effectively mitigate risk



Communicate your policy broadly and train staff members who need it



Review policy guidelines regularly to not only entrench in the organization but to also measure their efficacy



Enforce!

37

37

## Thank you! Questions?

- Thank you for hosting us, HCCA!
- Presentation template by [Slidesgo](#)
- Icons by [Flaticon](#)

38

38