

# Who Should Own Making Sure Physician Arrangements are Compliant?

HCCA COMPLIANCE INSTITUTE 2021

**PRESENTED BY:**

- Ryan Meade, Faculty of Law, University of Oxford
- Sheryl Vacca, SVP/Chief Risk Officer, Providence St Joseph Health
- David Lane, VP/Chief Compliance Officer, Providence St Joseph Health



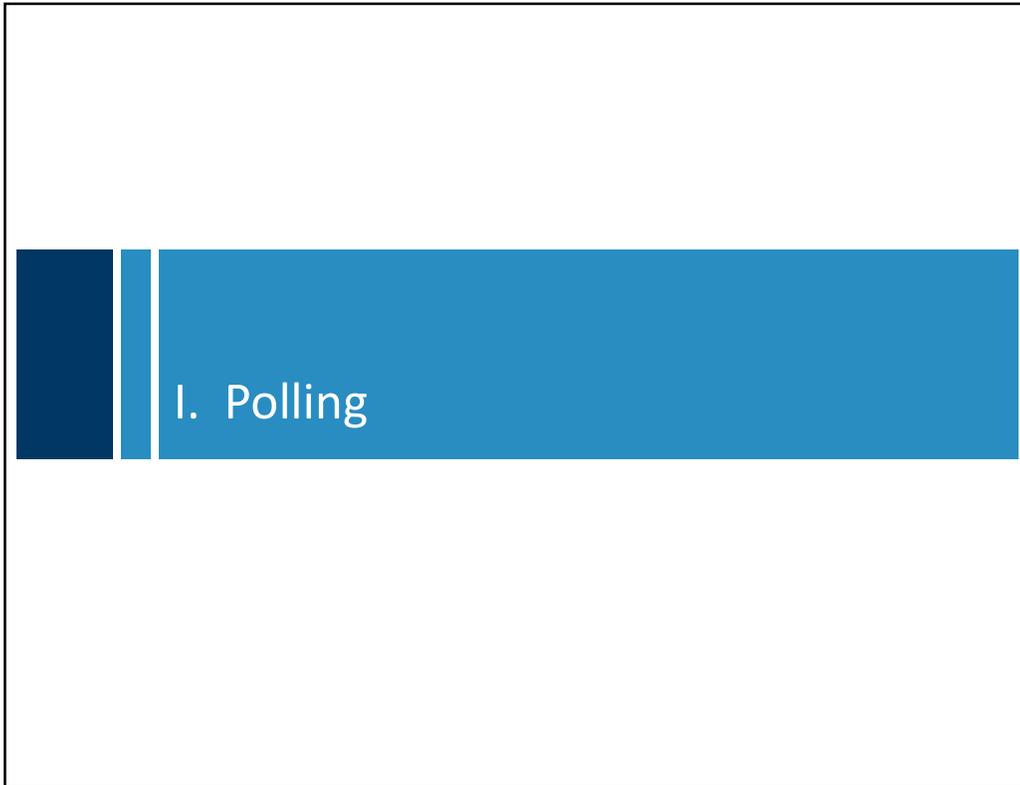
1

## Objectives

- Discuss key regulatory points on referral arrangements
- Review how operations and compliance can divide responsibility for arrangements
- Outline compliance auditing and monitoring options for arrangements
- **\*\*Note: Ideas for Auditing and Monitoring Tool (separate handout)**

2

2



3

## I. Polling Questions

---

- 1. Your current position is:
  - a. Compliance
  - b. Physician Arrangements Manager
  - c. Physician
  - d. Legal
  - e. Risk
  - f. Finance
  - g. Other

4

## 2. Polling Questions

2. What is your involvement in physician arrangements?
  - a. Oversee physician arrangements
  - b. Provide advice on arrangements
  - c. Independently perform auditing and monitoring of physician arrangements (not management)
  - d. Perform finance functions to execute physician arrangements
  - e. Other

5

5

## What Do We See in the Industry?

Many approaches to who "owns" physician arrangements. A better way to put it may be, who "owns" which part of physician arrangements?

A typical approach:

- Operations/Management: Proposes Idea
- Legal: Structures the Arrangement to Meet Operation Need
- Compliance: Conferral for Auditability and Governance Integrity (conferral with Compliance before proposed arrangement goes too far)
- Legal or a Central Operations Office: Tracking Database
- Operations/Management: Maintenance of Arrangement
- Compliance: Auditing and Monitoring of Arrangement

6

6

## Slide 5

---

**LD(2)** Lane, David (He/Him), 2/22/2021

## II. Why are Physician Arrangements an Important Area for Compliance?

7

## Impact of COVID on our Health Systems

- The dynamic of physician arrangements is rapidly changing (even since submitting this proposal!)
- COVID introduced the need for innovative arrangements between hospitals-physicians with less cost
- Pre-COVID, hospital arrangements with physicians were designed to complement hospital services
- COVID expanded telehealth and the “hospital without walls” concept...all while hospital suffered severe financial distress
- Health Systems are now looking more holistically at not just complimenting hospitals but providing sophisticated services *in less costly locations*

8

8



## Impact of COVID on our Current Health Systems

- Where are those less costly locations for providing services?
  - Outpatient centers that may currently be owned by physicians or the hospital-physician collaboration offers significant advantages to both
- An Evolution of Physician Arrangements:
  - Basic Physician Arrangement: Hospital contracts with physician to serve as medical director or physician leases space from a hospital
  - Joint Venture Arrangement: Hospital partners with physician-owned entity to complement hospital services
  - COVID-era Joint Venture: Provide sophisticated care off-site in collaboration with physicians (rapid acceleration!)

9

9



## Common Arrangement Types for Compliance Consideration

- Independent Contractors
- Employment Agreements
- Leases (space, equipment, staff)
- Acquisitions of Physician-owned Outpatient Centers (e.g., ASCs, infusion centers, imaging centers, urgent care clinics, etc.)
- Joint Ventures with Physicians for Co-ownership of Outpatient Centers
  - Hospital majority interest
  - Hospital minority interest
- Management Services of Physician-owned Outpatient Centers
- Three-party Arrangements between Hospital/Health System, Physicians, and Investors (e.g., Private Equity Firms)

10

10

## Key Regulatory Points: (Different for Each Arrangement)

- Know under which Stark "exception" Legal has structured the Arrangement
- Contracts (how many contracts per *Arrangement*?)
- Fair Market Value in the Arrangement
- What due diligence is needed? (What due diligence was done?)

11

11

## Key Regulatory Points (play out differently in each Arrangement)

- JVs: Who has compliance responsibility?
  - Who is the compliance officer/privacy officer?
  - Who oversees policies and procedures?
  - Who does training and education?
  - Who does auditing/monitoring and investigations?
- JVs: How is the governance structured?
  - *Minority interest does not mean no compliance responsibility*
- Management Services: Who has responsibility for fulfilling regulatory obligations?
  - Who refunds overpayments?
  - Who reports privacy breaches?
  - Who runs exclusion checks?

12

12

### III. Challenges and Opportunities

13

### 3. Polling Question

- What has been your biggest challenge with physician arrangements during COVID?
  - a. Lack of resources
  - b. Changing legal/regulatory landscape
  - c. Keeping up with demand
  - d. Other

14

14



## Challenges

- Speed and trajectory of the COVID and the pandemic
- New types of services
  - Telehealth services
  - Ambulatory Care
  - New CMS billing codes and processes
- Cross-State credentialing
- Speed of new arrangements needed to meet demand
- COVID waivers and new legal requirements
- Coordination of new arrangements with legal, risk, compliance, contracting, etc.

15

15



## Opportunities

- Crisis forces change (opportunity)
- New ways to do business
- Changes from pandemic "force" or encourage collaboration
- Stark changes
- Pandemic "allowed" flexibility

16

16



## Responses to Challenges- Ideas for Compliance to focus on

---

### ■ Tracking Arrangements

- Older Arrangements  
May have been in place for multiple years  
Identify if the arrangement is a “one-off” Arrangement

Conduct review to:

focus on contract language and whether it is current, ie: terms, service descriptions, etc.

17

17



## Response to Challenges (cont)

---

### ■ Tracking Arrangements (con't.)

- Review information such as Accounts Payable ledgers, Accounts Receivable ledgers, Cash Receipts and Disbursements logs, vendor listings, and similar data to identify all payments to or from potential referral sources
- Consider recommending to management to limit the duration of Arrangements to ensure that all Arrangements come up for regular renewal review.
- Periodically review all active Arrangements that have been in place for a defined number of years (e.g., three years) to ensure that the business need still exists; that the Arrangement is consistent with FMV; and that the terms of the Arrangement are appropriate.

18

18

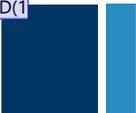


## Response to Challenges (cont)

- Tracking Service and Activity Logs (con't.)
  - Review detailed daily logs of hours incurred by activity prior to payment and assure it is documented
  - Review oversight of Arrangements is sufficient to ensure that the Arrangement continues to be necessary for the purposes set forth in the original business need analysis.

19

19



## Response to Challenges (cont)

- Tracking Service and Activity Logs (con't.)
  - Conduct an FMV analysis (partner with legal on this area) of compensation for employed physicians (Medical Directors) to review the Arrangement in its entirety, including clinical time, call time, and administrative time associated with medical directorship responsibilities
  - Ensure that Arrangements have documentation that supports any payments to the physician.

20

20

**Slide 20**

---

**LD(1** Lane, David (He/Him), 2/22/2021



## Response to Challenges (cont)

### ■ Monitoring Lease and Use Arrangements

- Review lease payments received from physicians and monitor/compare them to lease agreement terms.
- Assure property appraisals are conducted annually to ensure lease Arrangements are within Fair Market Value
- Monitor the usage of any supplies or equipment through Use Agreements to ensure any such usage is consistent with the terms of the applicable agreements.
- Conduct independent auditing and monitoring of lease or use Arrangements to ensure actual use of space does not exceed the terms of the agreement

21

21



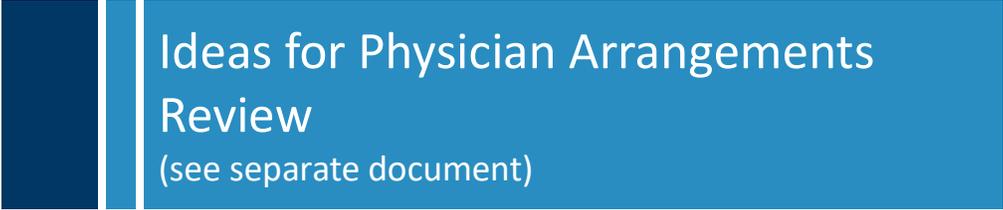
## Response to Challenges (con't.)

### Written Review and Approval Process

- Ensure that there is a policy outlining the required review and approval process or required approval documentation for each type of Arrangement.
- Useful tool for management and compliance is a cover sheet for contract documentation. Identifies an overview summary of contract purpose, business need, etc.
- Approvals need to be appropriately identified

22

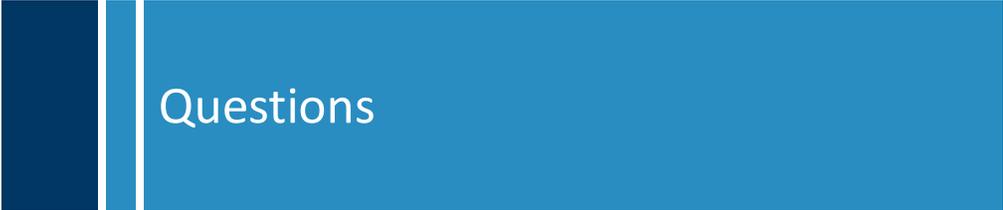
22



## Ideas for Physician Arrangements Review

(see separate document)

23



## Questions

24