



Physician Arrangements

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Really? That's illegal?


February 14th, 2020



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CHRISTUS Health is a faith-based, not-for-profit system made up of more than 600 centers, including long-term care facilities, community hospitals, walk-in clinics and health ministries. We are a community 45,000 strong, with over 15,000 physicians and medical staff providing individualized care.





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CHRISTUS Locations

CHRISTUS operates
in 4 U.S. states, 7
states in Mexico,
Chile & Colombia



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2018

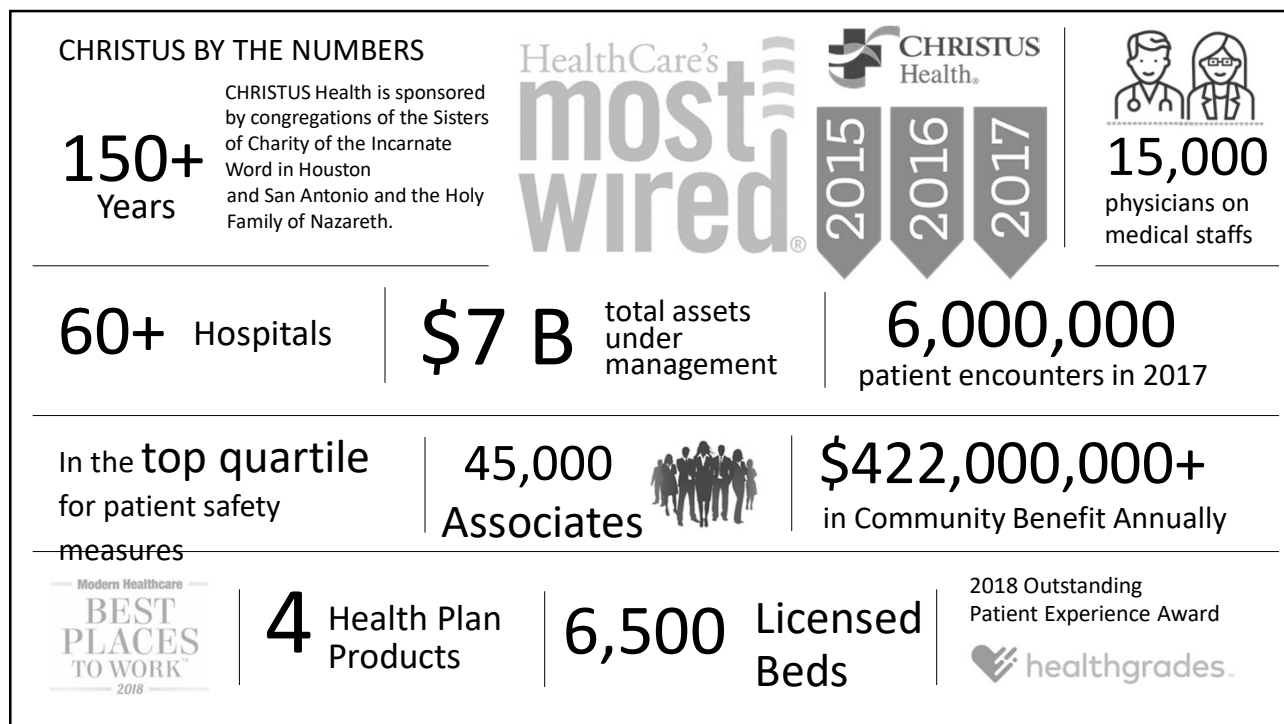
45,000 Associates

60 hospitals

~\$7 billion total
assets under
management


15,000 physicians
on medical staffs

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Who is CHRISTUS Clinic?



- 110 Primary Care access points
- 10 Urgent Care clinics
- Approximately 1,100 physicians and advanced practice clinicians
- Operations in 4 states – Texas, Louisiana, New Mexico and Arkansas
- Delivering over 2.3 million visits annually
- ACO – generated savings of over \$18M for CY 2018

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Physician Arrangements: Legal and Regulatory Considerations

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Why Does It Matter? What is at Stake?

State of Health Care Fraud Investigations

- FY 2018 is 9th consecutive year civil health care fraud settlement/judgments have exceeded \$2B
 - \$2.8B recovered
 - of which \$2.5B (90%) was from healthcare industry
- FY 2017: \$4 ROI for every \$1 spent on anti-fraud efforts

Civil and Criminal Penalties

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False Claims Act



- Allows government and/or private individuals to bring claims
- Each claim submitted to Medicare/Medicaid includes certification of compliance with Anti-Kickback Statute ("AKS") and Physician Self-Referral ("Stark") Law
- If Certification is false => Fraud Allegation

Civil fines from to \$11,181 - \$22,363 and penalties up to 3x value of fraudulent claims.

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Anti-Kickback Statute ("AKS")



- Prohibits the willful and knowing offer, solicitation, payment, or receipt of any remuneration, directly or indirectly, for
 - Referring an individual covered by a government health program or arranging for such a referral; or
 - Purchasing, leasing, ordering, arranging for, or recommending the purchase, lease, or order of any good, facility, service, or item covered by a government health program.

Summary: Cannot give anything of value in exchange for making a referral or in an effort to persuade to make a referral for services under a government health program – "One Purpose Test"

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Anti-Kickback Safe Harbors



- Bona Fide Employment
- Space or Equipment Rental
- Personal Services Contracts
- And others

Each Safe Harbor has its own set of requirements to be met.

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Stark Law Prohibition



- Physician may not refer Medicare/Medicaid patients to a Designated Health Service ("DHS") entity if the physician (or immediate family member) has a financial relationship with the entity.
- DHS entity cannot bill for the referred service
 - unless the financial relationship qualifies for an exception

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Examples of Stark Law Exceptions



- Employment Agreements
- Services Agreements
- Leases (Space and/or Equipment)
- Relocation/Recruitment Agreements
- Isolated Transactions
- And Others

Each exception has its own set of requirements to be met.

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Common Themes for Arrangements



- To Generally Fall into Exceptions and Safe Harbors
 - “does not take into account, directly or indirectly, the volume or value of referrals or other business generated between the parties”
 - “even if no referral were made”
- This applies to:
 - Whom gets contract;
 - Whether to continue or terminate a contract;
 - Rate of pay under a contract
- ❖ Referrals are not to be used to make these decisions.

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Where does this leave us???

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Physician Arrangements – Creating a Structure to Ensure Compliance

Three Lines of Defense

“The Third Line”

External Audit and Internal Audit will provide independent oversight and audits

Independent
Oversight

“The Second Line”

Compliance, Legal, and Risk will work in conjunction with management to create the framework and policies guiding the Organization

Compliance,
Legal, Risk,
Quality

“The First Line”

Management is accountable for identification of risks, internal controls, compliance activities and monitoring in order to be compliant with laws and regulations

Business Compliance
Ownership

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Physician Arrangements –

“The First Line”

Management is accountable for identification of risks, internal controls, compliance activities and monitoring in order to be compliant with laws and regulations

Business Compliance Ownership

Create a chartered Compensation Committee

- Defined Membership
 - Independent Committee Members
 - No one approves their own compensation
- Defined Responsibilities
 - Approval of all new hire compensation
 - Approval of compensation above the MGMA 75th%
 - Approval of compensation model changes
 - Approval of compensation policies
- Create...

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The Firewall–



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Physician Arrangements – “The First Line” – The Firewall



The Firewall is separation between those who are responsible for physician compensation and those who know what the “down stream” impact of those physicians are to the hospital.

- Hospital administrators do not set and approve physician compensation
- No documents are presented that have any “down stream” information
- No conversations about “down stream”
- Complete structural separation between the compensation team and operations when setting compensation

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Physician Arrangements –



“The Second Line”

Compliance, Legal, and Risk will work in conjunction with management to create the framework and policies guiding the Organization

**Compliance,
Legal, Risk**

- Create a Compensation Policy
 - Define Compensation Models
 - Define approval levels
 - Define when FMV, Legal and Senior Leadership Approvals will be needed
 - Define how compensation will be administered
 - How frequently will compensation be reviewed
 - Key terms – work RVUs, MGMA, base salary, incentive compensation, etc.
 - Appeal process – who has final say

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Physician Arrangements – “The Third Line”

“The Third Line”

External Audit and Internal Audit will provide independent oversight and audits.

Independent
Oversight

- Annually assess:
 - Greatest areas of risk
 - Where change has occurred (employment agreements, tax-ids, acquisitions, mergers, etc.)
 - Hot Topics from CMS, OIG, FBI, etc.
 - Legal and Regulatory changes
 - Personnel turnover

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QUESTIONS???

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