South Florida Hospital News and Healthcare Report
THE REGION'S MONTHLY NEWSPAPER FOR HEALTHCARE PROFESSIONALS & PHYSICIANS

Hospital-Physician Compensation Arrangements – Why You Should Be Reviewing Your Contracts Now

Now more than ever, physicians and hospital officials should be reviewing their compensation arrangements to conform to legal requirements under the health care laws. Government investigators and private "whistleblowers" here in Florida are zeroing in on such arrangements, and litigation involving the False Claims Act (FCA) and the Physician Self-Referral Law, known as "Stark," is on the rise. The Stark law is a strict liability statute that, if violated, can constitute a false

claim under the FCA, resulting in major liability.

A lead example is the Halifax case in Central Florida. Procedurally complex and substantively dense, the case has put providers on notice that the government will invest significant resources in such matters. There the court found certain physicians' bonus pool violated Stark because it took into account the volume or value of referrals for designated health services. In a pertinent part of the case, a physician bonus pool included total revenue from designated health services in the overall bonus pool of the hospital's group of medical oncologists, despite the division of that pool, which was based on each physician's personally performed services. That case also alleged that other physician compensation arrangements were above fair market value because the hospital was not making any profit, but actually absorbing the overhead cost of the department, in order to pay the physician 100% of collections on their services.

Another recent case in Central Florida likewise showcases hospital physician compensation arrangements. In All Children's Hospital System, the private relator and the government alleged that 17 employed physician arrangements violated the Stark law in a False Claims Act suit. Specifically, the suit alleged physicians were employed above fair market value at a big financial benefit to the physicians and a net operating loss to the hospital system. A hospital system here in South Florida is also the target of a false claims act case, premised on violations of Stark for physician compensation arrangements above fair market value or out of the realm of "commercially reasonable." These allegations and the decisions in various cases highlight the trend in Florida to scrutinize physician compensation arrangements with hospitals.

As more hospitals and physicians align to coordinate care and engage in new health care models, neither side can afford to stick their heads in the sand. All parties should enter new arrangements with eyes wide open. Further, hospitals should review current physician compensation arrangements to ensure they are still commercially reasonable and consistent with

fair market value. Hospitals cannot overlook the need to re-evaluate arrangements with 'loyal' physicians – the enforcement risk is far greater than any loss of physician loyalty. To navigate this uneasy terrain, hospital management should engage valuation experts to ensure their compliance. To that end, hospitals cannot and should not "opinion shop" among experts focused on giving answers their physicians simply want to hear. Reasonable and objective standards must be used, and documented. If unclear on requirements or compliance, hospitals should reach out to counsel and perform compliance audits under the attorney-client privilege. This type of due diligence is no longer going "above and beyond" in the industry, but is expected given the rampant whistleblower risk in South Florida.

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