by Gail Peace

Physician arrangements: The missing link

» Stark Law and Anti-Kickback Statute violations may be technical.
» Technical violations are frequently process related.
» Fair market value means each payment is within scope.
» Operational and financial management is critical to ensure contract integrity.
» Mistakes are expensive and avoidable.

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The Practical Guidance for Health Care Governing Boards on Compliance Oversight,[1] released April 20, 2015, identifies physician arrangements as a high-risk area for hospitals. All contracts must comply with Stark Law (Stark), Anti-Kickback Statute (AKS), and False Claims Act (FCA) at all times. Organizations spend tremendous resources in order to carefully structure contracts to fit within all the safe harbors for these regulations upon inception.


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A majority of hospitals use templates and have internal legal review to ensure the setup of any new physician arrangement. Fair market value (FMV) compensation is part of the contract structure that the organization considers. Many hospitals have blended rates regardless of specialty, others consult Medical Group Management Association (MGMA) surveys for hourly guidelines,[2] and some have an outside agency perform a FMV study, or use some combination of these. The Legal department may use a contract management system to facilitate the setup of the contract. This system serves as a master database and sends reminders when the contract nears expiration.

If these steps are all that is needed, why are Stark and AKS violations and settlements with the Office of Inspector General (OIG) on the rise? The liability is strict, meaning that the punishment for inappropriate payment is the same regardless of the intent. A recent OIG $10 million settlement in Ohio[3] was related to documentation and missing physician time logs. These are examples of technical violations, meaning the organization did not technically follow the rules of the contract.

The root cause of recent settlements

The missing components are operational and financial in nature. Are the contracts being followed as written? Does the organization have the processes to assess that all safe harbors are being maintained at all times? The most common reason for settlements is that the organization is not operationally and financially following the contract as written. Frequently, these are described as technical violations, because the organization did not intend to break the rules of the contract.

In order to maintain the integrity of physician arrangements, the contracts must be actively managed every time a payment is made, not just analyzed at the time they are executed. Every physician's time log must be compared against the original contract and the current year-to-date

payments to ensure compliance. Each time log should be carefully checked against the contract, to make sure it is within scope. Good business practice requires active operational and financial management of the time logs and documentation of the work performed on the contracts.

Things that may go wrong resulting in a violation

Many Stark violations are technical in nature and may be the result of missing processes. For example, the contract may require the physician to turn in a time log within 60 days of the end of the billing cycle. If a regulatory body arrives and asks to see all time logs associated with payments over the past three years and they cannot be found, or if they are not current, essentially the organization is not following its own rules. If a payment was made and no time log is associated, it is a violation. Each payment is a violation, and every referral from this physician from that point in time goes into the settlement calculation.

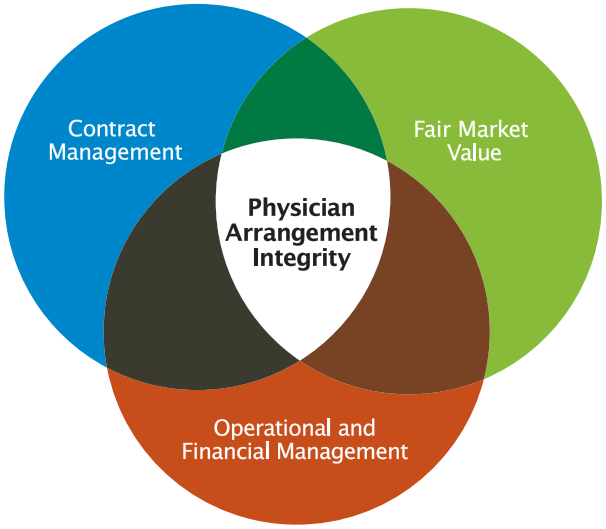
Common causes of technical violations:

- Contract ends, physician keeps turning in time logs. Those processing payments miss the expiration and continue to pay.
- Physician turns in a whole year's worth of time logs at once, outside of the time allowed for submission.
- The payment is automatic each month. The organization pays without verifying that time logs have been submitted.
- The time log is illegible.
- The time log contains non-compensable items, yet the hospital paid for the hours.
- The contract rate is not actually the amount being paid, or financial checks are lacking or are missed.
- The same time log is paid multiple times.

The missing Link

As physician arrangements continue to become more complex, it is nearly impossible to manage all the details around each payment. Hindsight being 20/20, one might ask how the current processes support the careful monitoring of these payments.

The 19th annual Health Care Compliance Association's (April 2015) conference in Orlando, Florida hosted several sessions on how hospitals are developing complex tracking solutions to ensure the analysis is performed at the time of each individual physician's payment. Process failures are a common reason for technical violations. Operational and financial oversight is the missing link. Without this last step, the integrity of the physician arrangements cannot be maintained (see diagram).



Summary

It is critical that your organization follow those contracts exactly as written, which requires active management of the payments. Most organizations do a good job of setting up the contract to clearly fit within safe harbors, but it is incredibly easy to fall out of compliance. FMV means each payment is always within the scope of the contract's financial terms.

Operational management means each payment must be for duties that are part of the contract. Each duty written by the physician should be part of the compensable duties in the contract. Management should compare each time log with the contract before compensating the physician.

Use the three good business practices (contract management, FMV, and operational and financial management) to ensure contract integrity success. Engage automation where possible to decrease the number of necessary steps and ensure accuracy.

1. *Practical Guidance for Health Care Governing Boards on Compliance Oversight*, published April 20, 2015, by AHIA, AHLA, HCCA and the OIG. Available at http://1.usa.gov/1GMMd2w
2. Medical Group Management Association: Physician Compensation and Production Data. Available at http://bit.ly/1GieJci
3. Department of Justice press release: Ohio-Based Health System Pays United States $10 Million to Settle False Claims Act Allegations. March 31, 2015. Available at http://1.usa.gov/1GvaLvU