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PHYSICIAN CONTRACT COMPLIANCE PROGRAM

It is not uncommon for hospitals to have contractual agreements with independent physicians for services such as medical directorships, office space leases, on-call arrangements, recruitment agreements and professional services agreements. Many hospitals focus on the initial physician contract development itself, taking steps so that appropriate provisions are included and that the contract is fully analyzed by the legal department of the hospital or by outside counsel. But some hospitals may lack appropriate monitoring procedures that can assist with continued contract compliance. Some of the most common violations hospitals may discover during internal analysis of their physician contractual arrangements can include:

- Expired contracts,
- Financial relationships where no written contract ever existed,
- Undocumented modification of financial terms,
- Terms modified during the first year in violation of safe harbors and exceptions available under the Anti-Kickback Statutes and Stark Law,
- Agreements that incorrectly describe the service,
- Hospital benefits to a doctor that exceed Stark's minimum exception.

If such systems are not already in place, hospitals should consider creating and maintaining a database of existing, new or renewed physician contractual arrangements potentially including the identity of the parties, a description of goods and services provided under the arrangement, compensation methodology and amount and documented fair market value for each transaction, preferably by an independent third party.

Given the above government enforcement initiatives, hospitals may consider analyzing the documentation available for their physicians' contractual arrangements. This analysis can assist in identifying potential areas at risk for violations of the Anti-Kickback Statutes or Stark Law. Based on recent enforcement efforts, the analysis may include a focus on problem areas including:

- Non-enforcement of late payments or non-payment for certain months or a lengthy period of time,
- Lack of current and/or appropriate fair market value documentation,
- Increased space usage by physician tenants without amendments to the applicable lease agreement,
- Payments that do not match terms of the lease agreement,
- Failure to comply with other terms and conditions set forth in safe harbors or exceptions for lease arrangements under the Anti-Kickback Statutes and Stark Law.

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Medical Directorship, Physician Services, On-call Agreements

Despite agreeing to provide documentation of time spent delivering various medical directorship duties, many hospitals may be challenged in getting such documentation on a timely basis from the physician, which can lead to questions as to whether the services were indeed performed. Other potentially risk areas can include:

- Lack of current, appropriate fair market value documentation for rates of payment,
- Missing or inadequate time sheets or other documentation to support past payments,
- Payment for services reflecting renegotiated rates without timely amendments to the effective contract,
- Payments made without a current active contract,
- Changed or reduced responsibilities for medical directorships without applicable amendments to the effective contract,
- Payments that do not match the terms of the written agreement,
- Failure to comply with other terms and conditions set forth in safe harbors or exceptions for personal service arrangement under the Anti-Kickback Statutes and Stark Law.

Recruiting Agreements

Recruiting agreements are possibly among the most challenging agreements to monitor, because revenue guarantee and payback periods can last several years. Potential risks can include:

- Lack of current, appropriate fair market value documentation
- Lack of appropriate community need documentation,
- Payments or re-payments to/from recruited physician not matching contract terms,
- Inappropriate financial information provided by recruited physician to support revenue guarantee payments,
- Failure to comply with other regulatory requirements imposed on recruitment arrangement under the Anti-Kickback Statutes, Stark Law or tax-exemption requirements.
- Failure to provide/report forgiveness of debt

Conducting an Internal Assessment

Based on issues that an internal assessment may trigger, hospitals can work with their counsel to determine the appropriate scope for an internal assessment of existing physician contractual arrangements. Initial steps may include:

- Allocating enough personnel and other resources (such as a contract management system) to conduct the assessment,
- Determining the assessment period,
- Identifying the scope of the assessment, including the number of arrangements to analyze in detail (that is, deciding between sampling vs. total analysis).

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Assessment steps can include analyzing and noting whether the following information has been provided for the applicable assessment period:

- Signed, written contracts as well as applicable amendments for contractual arrangements to which payments were made or received,
- Appropriate documentation of fair market value (developed either internally or provided by a third party consultant) for compensation, income guaranty (e.g., reasonableness of guaranteed compensation levels), loans, and purchase or lease of items or other services (if applicable),
- Documentation of community need for recruited physician(s),
- Documentation indicating payments made to the physician(s) match the written terms of agreement (e.g., analysis of accounts payable runs),
- Documentation indicating payments received from physician(s) match written terms of agreement (e.g., analysis of accounts receivable runs for leases),
- Documentation provided by physician(s) supporting payments made to physician(s) from hospital (e.g., incurred expenses for recruitment agreements, time sheets for services agreements),
- Assessment of the hospital's current system for management and administration of physician contractual arrangements, including the use of a centralized data base.

Potential additional assessment tasks can include:

- Analyzing the individual contracts and noting whether the responsibilities are listed and are unique in nature compared to the other contracts the physician or physician group might have with the hospital (i.e., each contract "stands on its own" from a responsibility standpoint),
- Analyzing the monthly time sheets for the assessment period for each contract provided to the hospital for payment to confirm that the hours worked are within the terms of the individual agreement that the hours submitted for payment don't "overlap" with other time sheets submitted for a physician's or a group's other contracts.
- Identifying instances (if applicable) where multiple contracts are in place related to the same services (e.g., multiple medical director agreements for the same department and responsibilities),
- Securing other required documentation unique to the specific contract.

For further information regarding the Development of your Physician Contract Compliance Program, please contact:

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