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Documentation of Recruitment Incentives May Make or Break Stark Exception

By Nina Youngstrom

Hospitals often give physicians incentives, including loans, income guarantees and malpractice insurance subsidies, to recruit them to the service area, which is made possible by the Stark Law exception for physician recruitment incentives—as long as they check a few boxes. For example, hospitals can't link the incentive to the volume or value of the physician's referrals or "increase the amount of the incentive because the physician guaranteed you all their referrals," said attorney Bob Wade, who spoke at the Health Care Compliance Association's regional conference in Hawaii Oct. 7. Incentives may flow through physician practices, although there are strings attached. If a recruitment arrangement takes the form of an income guarantee, the amount is limited to practice expenses that are the "actual additional incremental costs attributable to the recruited physician," according to the Stark regulations. This is "the riskiest area in physician recruitment," said Wade, with Barnes & Thornburg LLP. "Usually they don't document the expenses to show why they are incremental" (see Captain Integrity cartoon, below, which Wade developed). For example, the medical group may send an invoice to the hospital for \$20,000 for the recruited physician's share of the office space, based on a five-physician practice with a \$100,000-a-month lease. But if they didn't increase the size of the space and therefore the rent paid for the incremental space because they added the doctor, the hospital shouldn't pay rent expenses as part of an income guarantee, he said. Contact Wade at bob.wade@btlaw.com.

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