

Report on Medicare Compliance Volume 31, Number 11. March 28, 2022 Real Estate, Stacking, Subsidies: Top Hospital-Physician Transaction Risks

By Nina Youngstrom

In an example of how arrangements with a physician may be fair market value in isolation but together cross into dangerous territory, the president of a heart hospital was paid additional compensation for serving as a medical director. He also was the principal investigator on several clinical trials and a consultant for the sponsor of the trials, and while the payment for those services came from the trial sponsor, they contributed to the problem of an overcommitted employed physician executive paid too generously.

“Each arrangement may be fair market value and commercially reasonable, but when you stack them together, they exceed fair market value, or the totality of the services doesn’t make sense and is not commercially reasonable,” said Shannon Sumner, a principal at PYA, who reviewed the heart hospital president’s arrangements, which were subsequently unwound.

The risk of stacking, which can lead to violations of the Stark Law and Anti-Kickback Statute, underscores the need to link contracts in a contract management system because they may be executed by different leaders, she said during a March 16 webinar sponsored by the Health Care Compliance Association.^[1] Manual oversight also is feasible by providing all the contracts to an authorized person who can “analyze the totality of services” and fair market value, Sumner said. “We have also seen where this audit is completed by internal audit or compliance on a routine basis.”

Stacking of administrative agreements is one of the top 10 compliance concerns related to hospital/physician transactions, according to Sumner and Carol Carden, a principal at PYA.^[2]

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