

Complete Healthcare Compliance Manual 2024

Contracts with Referral Sources: Entering into a Proper Physician Arrangement

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What Is a Proper Physician Arrangement?

It is vitally important that healthcare organizations have a formal process for entering into financial arrangements with physician referral sources. Merely *offering* a financial arrangement to a referring physician that does not comply with healthcare regulatory requirements, including fair market value and commercial reasonableness, could impose civil and criminal penalties on all persons and entities involved.

By way of example, if an officer for a healthcare entity offers a financial arrangement to a referring physician that is not consistent with fair market value or is not commercially reasonable, the offering entity, officer of the entity, and recipient physician could be subject to criminal prosecution and penalties under the Anti-Kickback Statute.^[2] If the offering of the financial terms are not consistent with fair market value or are not commercially reasonable, those responsible within the offering entity for the development of the financial arrangement could exacerbate the potential liability. If a high-ranking officer of a healthcare entity creates a financial arrangement that is not compliant with fair market value or commercial reasonableness principles, individuals subordinate to the officer, believing that the officer's proposal is compliant, could unknowingly document and finalize the inappropriate financial arrangement.

The commencement of financial arrangements involve multiple parties within healthcare organizations. Frequently, operating divisions, finance, legal, and compliance will all be involved in some aspect with respect to the creation of and entering into financial arrangements with physicians. Because multiple departments are involved, the procedures implemented by a healthcare organization should require input and approval by each applicable department. The risk of compliance violations for entering into physician financial arrangements is increased if a single individual determines the terms and conditions of the financial arrangements and asks the other departments (such as finance, legal, and compliance) to simply "paper the deal."

If a financial arrangement involves a sophisticated healthcare entity, physicians contracting with such entity frequently rely on the expertise of the entity, assuming that the entity understands the healthcare regulatory restrictions around fair market value and commercial reasonableness and compliance with other healthcare regulatory requirements. Because the contracting physician may be exposed to potential healthcare regulatory liability, it is important that the contracting physician seeks counsel from independent competent counselors knowledgeable about the healthcare regulatory requirements.

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