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Stacked physician compensation: Keys to compliance

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Compensation paid to physicians is under constant scrutiny as the number of healthcare settlements continues to rise both in number and in settlement awards. There has also been a shift by qui tam relators and the government to include both physicians and medical practices in enforcement action cases. Recent settlements have demonstrated the severe financial implications of improper financial relationships as shown in the Table 1.

2015 & 2016 Notable Healthcare Settlement Summary			
Year	System	Settlement Reason	Amount
2015	Citizens Medical Center ^[1]	Civil FCA allegations that it engaged in improper financial relationships with referring physicians.	\$21.8 Million
2015	North Broward Hospital District ^[2]	Civil FCA allegations that it engaged in improper financial relationships with referring physicians.	\$69.5 Million
2015	Columbus Regional Healthcare System ^[3]	Civil FCA allegations that they submitted claims to federal health care programs that violated the Stark Law and that misrepresented the level of services they provided.	\$35 Million
2015	Tuomey Healthcare System ^[4]	Civil FCA judgment entered against it for illegally billing the Medicare program for services referred by physicians with whom the hospital had improper financial relationships.	\$72.4 Million
2015	Tuomey Healthcare System ^[5]	Former Tuomey Healthcare System CEO (Ralph Cox) - illegal referrals	\$1 Million
2015	Memorial Health, Inc., Memorial Health University Medical Center, Inc., Provident Health Services, Inc., and Memorial Health University Physicians ^[6]	Civil FCA allegations that they engaged in improper financial relationships with referring physicians that violated the Stark Law.	\$9.9 Million
2016	Tenet Healthcare Corp. (Tenet) ^[7]	Allegations of illegal kickbacks paid to clinic owners in exchange for referring patients for labor and delivery to Tenet hospitals.	\$514 Million

2015 & 2016 Notable Healthcare Settlement Summary			
Year	System	Settlement Reason	Amount
2016	Lexington Medical Center ^[8]	Hospital overpaid physicians and rewarded them based on their referral of patients to the facility.	\$17 Million

Table 1: 2015 & 2016 Notable Healthcare Settlement Summary

Staying within the law

But what does all this mean? The answer is that any compensation paid to a physician must meet several requirements. It must be commercially reasonable. In the preamble to the Stark Phase II interim final rule, CMS defined commercially reasonable as:

[A]n arrangement will be considered commercially reasonable in the absence of referrals if the arrangement would make commercial sense if entered into by a reasonable entity of similar type and size and a reasonable physician (or family member or group practice) of similar scope and specialty, even if there were no potential designated health services referrals.^[9]

Physician compensation must also be consistent with fair market value (FMV). According to the International Glossary of Business Valuation Terms, fair market value is defined as:

The price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arms-length in an open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts.^[10]

Compensation paid to physicians must not be in violation of the Stark Law. According to the Office of Inspector General, “The Stark Law (42 USC § 1395nn) prohibits a physician from referring Medicare patients for designated health services to an entity with which the physician (or immediate family member) has a financial relationship, unless an exception applies.”^[11]

The Anti-Kickback Statute (AKS) also figures into physician compensation. According to the Office of Inspector General, “The Anti-Kickback Statute (42 USC § 1320a-7b(b)) prohibits offering, paying, soliciting or receiving anything of value to induce or reward referrals or generate Federal health care program business.”^[12]

And finally, physician compensation must not trigger the False Claims Act,^[13] and other regulations designed to prevent fraud and abuse. According to the Office of Inspector General, “The False Claims Act (31 U.S.C. §§ 3729–3733) prohibits the submission of false or fraudulent claims to the Government.”

Thus, it is crucial to understand the entire compensation package being paid to a physician in addition to the individual components.

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