

Complete Healthcare Compliance Manual 2024

Contracts with Referral Sources: Importance of Monitoring These Arrangements

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Why Is It Important to Monitor Contracts with Referral Sources?

Once a financial arrangement is entered into with referral sources, it is vitally important that the financial arrangement be monitored to ensure that it remains compliant with all material laws, rules, and regulations. Healthcare organizations may establish detailed policies and procedures with respect to entry into proper physician financial arrangements. Healthcare organizations may document the fair market value basis for the financial arrangement and why it is commercially reasonable. The entry into financial arrangements with referral sources, including physicians, only begins the journey of compliance. Monitoring each financial arrangement for compliance is a material part of a financial arrangement with referral sources.

A healthcare entity, hypothetically, could enter into a financial arrangement with a referring physician that meets fair market value compensation and commercially reasonable standards. By way of example, a healthcare entity may document that entering into a financial arrangement with a referring physician for medical director administrative services at an hourly rate of \$150 is fair market value based upon the applicable physician's specialty, and the healthcare entity may adequately document that the financial arrangement is commercially reasonable because the services are reasonable and necessary. Frequently, however, even though the commencement of the financial arrangement with the referring physician may be representative of fair market value and be documented to be commercially reasonable, if the financial arrangement is not carefully monitored during the existence of the arrangement, the arrangement may not meet fair market value and commercial reasonableness standards through the implementation of the financial arrangement. It is also possible that if the arrangement is an independent contractor arrangement, and if the arrangement is not continuously subject to a written arrangement signed by the parties, the arrangement could fall out of compliance for failure to comply with documentation requirements, including the written arrangement signed by the parties requirement under the personal service arrangements exception under the Stark Law.^[2]

Using this example, assume that the healthcare entity pays a monthly stipend of \$1,500 for 10 hours of administrative services. If the arrangement is not carefully monitored, the healthcare entity could continue to pay \$1,500 per month for ten hours of service while the contracted physician only provides five hours of administrative service on average per month, the resulting hourly rate would be \$300 per hour as opposed to \$150 per hour.

$\$1,500 \text{ [monthly stipend]} \div 5 \text{ hours} = \300 per hour

versus

$\$1,500 \text{ [monthly stipend]} \div 10 \text{ hours} = \150 per hour

This example shows one way it is possible for a financial arrangement to fall out of compliance and exceed fair market value and commercial reasonableness standards if the administrative medical directorship is not

monitored by the healthcare entity and the physician. These are requirements under the Stark Law and Anti-Kickback Statute.

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