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Sample Checklist for Stark Employment Exception

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This checklist, which was created by Anne Novick Branan, appeared in HCCA's *Healthcare Compliance Forms and Tools*.^[1]

Stark Law Compliance Checklist for Employee Arrangement Exception

[COMPANY NAME]

Stark Law Compliance Checklist

Employee Arrangement Exception

Name of the Agreement:	_____
Other Party(ies) to the Agreement:	_____ and _____
Effective Date:	_____
Termination Date:	_____
Other Contracts with this Party(ies):	_____
	Name of the Agreement(s): _____
	Party(ies) to the Agreement: _____ and _____
	Effective Date: _____
	Termination Date: _____

*Meets Stark Exception (circle):	Yes or No
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INITIAL REVIEWER: _____ DATE: _____

FINAL REVIEWER: _____ DATE: _____

Stark Law Compliance Checklist

Employee Arrangement Exception

Requirements of Employee Arrangement Exception	Satisfied	Not Satisfied	Explanation
Each agreement is in writing and the physician is a bona fide employee of organization (i.e., receives a W-2).			
Each agreement is signed by all parties.			
Agreement specifies the identifiable services covered by the arrangement and compensation over the term of the agreement.			
Arrangement(s) cover all the services to be furnished by the physician (or immediate family member of the physician) to the entity. Condition is met if: <ul style="list-style-type: none"> All separate agreements between entity and physician and entity and family members incorporate each other by reference, or, if they cross-reference a master list of contracts, that is maintained and updated centrally and is available for review. Master list should preserve historical record of contracts. 			
Aggregate services contracted do not exceed those that are reasonable and necessary for the legitimate business purpose of the arrangement(s), and the services furnished would be commercially reasonable even if no referrals were made to the employer.			
Compensation is consistent with fair market value (FMV).			

Compensation is not determined in a manner that takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties.			
The term of each arrangement is at least one year. If an arrangement is terminated during the term with or without cause, the parties may NOT enter into an agreement where the material terms of the arrangement are different than the material terms during the first year of the original term of the arrangement.			
Compensation is also based on a form of productivity bonus based on services performed personally by the employed physician.			
Arrangement does not otherwise violate the federal Anti-Kickback Statute.			
Arrangement does not violate any federal or state law or regulation governing billing or claims submission (i.e., rules on reassignment of reimbursement).			
Services to be furnished under each arrangement do not involve counseling or promotion of an activity or business arrangement that violates any state or federal law or regulation.			

Indirect Compensation Arrangement	Satisfied	Not Satisfied	Explanation
<ol style="list-style-type: none"> 1. There is an unbroken chain of persons or entities between the referring physician and the designated health services (DHS) entity that have financial relationships (ownership or compensation). 2. The referring physician receives aggregate compensation from the person or entity in the chain with which the physician has a direct financial relationship that varies with the volume or value of the physician referrals and the individual unit of compensation is not fair market value for the services provided. 3. Physician referrals to DHS entity is a variable that can increase or decrease compensation 			

Directed Referrals	Satisfied	Not Satisfied	Explanation
<p>If compensation is conditioned on the physician’s referrals to a particular provider, practitioner, or supplier:</p> <ul style="list-style-type: none"> • The compensation must be prospectively set in advance. • The compensation is consistent with fair market value. • The compensation arrangement sets out in writing the requirement to make directed referrals and is signed by the parties. • The requirement for directed referrals does not apply if the patient has a preference for a different provider, practitioner, or supplier; the patient’s insurer makes a determination to use a different provider, practitioner or supplier; or in the physician’s judgment the directed referral is not in the patient’s best medical interests. • The directed referrals relate solely to the scope of identified services related to the physician’s employment. • The compensation under the employment arrangement is not contingent on the volume or value of directed referrals. 			

Notes:

- *The checklist only applies to compensation (i.e., remuneration) made in accordance with the identified arrangement, but does not consider any other types of remuneration (i.e., items of value) that may be involved between the parties (i.e., monetary or non-monetary).*
- *The arrangement is considered to be in compliance with the Anti-Kickback Statute if all checklist items are satisfied and there are no other overriding financial arrangements (i.e., improper “Stacking Agreements”) that would necessarily implicate the Anti-Kickback Statute.*

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