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Newsletter, March 2012

Compensation Structures for Medical Practices

Part 2 -- Compliance with Stark and Anti-Kickback Laws

Today, I briefly outline the legal requirements that apply when a group medical practice pays compensation to its members. My prior newsletter explained compensation plans from a non-legal perspective. This newsletter talks about the law, specifically, medical practice compensation plans under California and federal referral laws (Stark and Anti-Kickback).

In general, a group medical practice pays its physicians in some combination of three ways: (1) salary, (2) productivity payments, that is, productivity bonuses or shares in profits or collections, (3) corporate dividends. Let's start right away with how the referral laws treat salaries.

Salary

Salary is the first element of a compensation plan. Under Stark, salaries to a group's physician-employees must be:

1. For identifiable services,
2. In amount consistent with fair market value without taking into account any DHS referrals, and
3. Paid pursuant to a bona-fide agreement that would be commercially reasonable even if the physician never makes any referrals to the group.

If the group meets these conditions, it may pay productivity bonuses or a percentage of collections to the employee-physician for services the physician personally performs. Make sure you have a solid employment agreement that clearly shows its compliance with this Stark rule.

Productivity Payments - Bonuses / Shares in Profits or Collections

Productivity payments are the second element of a compensation structure. First and foremost, to make productivity payments, your group must meet the Stark definition of a "group practice." In this short article, I cannot cover the entire definition of a group practice. I'll focus only on those aspects of the rule that govern our chosen topic – compensation. Suffice it to say that meeting the definition of a group practice is essential for many reasons beyond making productivity payments, for example, making internal DHS referrals per the Stark exception for in-office ancillary services.

A group practice may pay profit-shares, percentages of collections and productivity bonuses that factor in services that the physician personally performed (including “incident to” services in some cases), for example, a physician’s total patient encounters or other relative value units. A group may also pay bonuses or shares based on other factors, e.g. years of experience or management services. A group practice may not pay a physician directly based on DHS referrals.

Most compensation plans make productivity payments based on a balancing of factors that reflect the culture of the medical group. Some groups are “eat what you kill,” meaning a majority of compensation relates to revenue personally generated by a physician. Others reward team building activities; see my last newsletter for more discussion of this topic.

Lastly, to make productivity payments under the Stark law, the group must have a written compensation plan for its members. Usually you see the plan as an attachment to board of director resolutions, but you might also see it in shareholders agreements or even the bylaws. The compensation plan must track the Stark law without deviation.

Dividends and Other Per-Capita Shares in Profits

Dividends are the third element of a compensation plan. The group may pay per-capita shares of overall group profits, for example per-share dividends, provided that the share of profit is not directly related to DHS referrals. Dividends are straight-forward because a per-share dividend rarely has any relation to referrals.

Enough already. The Stark and Kickback laws are terribly complex, so please get competent legal help for your compensation plan. Call me if you want to talk more.

Thoughts

Bill Murray --

- There are two types of people in this world; those who like Neil Diamond, and those who don’t. My ex-wife loves him.
- The more you know who you are, and what you want, the less you let things upset you.

Steve Martin --

- I’ve heard lots of people lie to themselves but they never fool anyone.
- Hello. I’m hello, and I’d like to say myself.
- Through the years, I have learned that there is no harm in charging oneself up with delusions between moments of valid inspiration.

Johannes Vermeer (c.1657)

