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Newsletter, October 2012 Physician Recruitment Agreements

A recruitment agreement allows a hospital to loan money to a physician in exchange for the physician's promise to practice in a certain geographic area. Recruitment agreement packages frequently reach 100 pages of mind-numbing prolixity and obscure complexity.

The basic idea is this: the hospital loans money to the physician so that the physician's salary is stable during the first years of practice while he or she is building up collections. This is called the income guaranty, because the physician's monthly income is fixed.

Loan = Income Guaranty minus Collections. The loan is the amount that the hospital pays toward the physician's salary + any other money the hospital pays for the physician (e.g. the physician's malpractice insurance premiums, moving expenses or housing allowances).

Notice in the example below that as collections increase, the loan decreases. If collections reach the income guaranty in a particular month, the hospital doesn't loan money in that month.

Month	Collections	Loan	Physician Income Guaranty
1	\$0	\$15,000	\$15,000
2	\$5,000	\$10,000	\$15,000
3	\$10,000	\$5,000	\$15,000
4	\$15,000	\$0	\$15,000
5	\$13,000	\$2,000	\$15,000
6	\$20,000	\$0	\$15,000

Physician is Obligor on Loan. The physician signs a promissory note in favor of the hospital for the loan. Usually the hospital reduces the amount owed on the loan over time, for example, the loan might reduce 1/3 each year starting at the end of year 1. By this example, the loan goes away after 4 years.

Group is Guarantor. If the physician works for a group medical practice, the group usually guaranties the loan. If the physician quits or otherwise breaches the recruitment agreement (see below), the physician (primarily) and the group (secondarily) must repay the loan. The group should consider limiting the term of the guaranty, for example, the guaranty can automatically terminate after 2 years, or it can automatically terminate when there is no amount outstanding on the loan after year 1.

Excess Collections. Who gets the excess collections, that is, collections over the income guaranty amount? In month 6 of the example above, collections exceed the income guaranty by \$5,000. The hospital usually demands the excess collections to pay down outstanding amounts on the loan. Once the loan is paid off, either the physician or group keeps the excess collections.

Termination. The hospital usually gives itself the right to terminate the recruitment agreement with or without cause. If the hospital terminates for cause, it usually can accelerate the loan (and the guaranty) and demand immediate repayment. Cause can include many failings, but the most important is the physician leaving the hospital's geographic area. Physicians should pay attention to the triggers for acceleration, and perhaps get a payment plan for the loan in the event of acceleration.

Stark and Anti-Kickback Legal Compliance. Recruitment agreements must comply with the Stark and Anti-Kickback laws. This is a joyous circumstance for us lawyers given the inscrutability of said laws. One interesting item of note is that the Stark law restricts non-competition covenants in the physician's employment agreement with the group. The group that employs the physician must understand that the physician can remain and work in the service area until the loan is forgiven.

I hope this article helps you. Call me if you want to talk more.

Funnies:

Jake was dying. His wife sat at the bedside. He looked up and said weakly:

"I have something I must confess."

"There's no need to," his wife replied.

"No," he insisted, "I want to die in peace. I slept with your sister, your best friend, her best friend, and your mother!"

"I know," she replied, "Now just rest and let the poison work."

As a senior citizen was driving down the freeway, his car phone rang. Answering, he heard his wife's voice urgently warning him, "Herman, I just heard on the news that there's a car going the wrong way on 280 Interstate. Please be careful!" "It's not just one car," said Herman. "It's hundreds of them!"



"The truth serum made you say some very hurtful things."