



# Increased Duties: Hospital / Physician Relationships



**hfma**

healthcare financial management association

**Southern California Chapter**

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# Overview

The Stimulus Bill, signed into law on 02/17/09, directs billions of dollars towards health care services and infrastructure, with emphasis on developing health information technology and encouraging the implementation of electronic health records

The President's budget proposes to increase funding for Medicare and Medicaid program integrity activities to reduce fraud and abuse

There are significant initiatives at both state and federal levels to increase transparency in financial arrangements between physicians and pharmaceutical companies

Health care reform is on the horizon that may substantially change the landscape of the health insurance market

# President's Budget Proposals

Fund Medicare pilot projects to evaluate payment reforms, ways to provide high quality care at lower costs, and better align provider payments with costs

Increase program integrity activities at HHS in order to reduce health care fraud, abuse, and waste

Encourage hospitals serving Medicare beneficiaries to reduce readmission rates and by bundling payments for certain post-acute care, similar to the reform proposal by Senator Baucus

Budget calls for hospitals to receive bundled payments that cover not just hospitalization, but also care from certain post-acute providers during the 30 days after the initial hospitalization

Budget also proposed linking a portion of Medicare payments for acute inpatient hospital services to the hospitals' performance on specific quality measures

# Omnibus Appropriations Bill

Consistent with the President's budget objective to reduce fraud, abuse, and waste, the Omnibus Appropriations Bill, which has been passed by the House of Representatives and is currently before the Senate, transfers \$198 million from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund to Medicare to conduct program integrity oversight activities

# False Claims Act Expansion

Senate (Grassley) and House are working on bills that would significantly expand the reach of the False Claims Act

Senate version would change calculation of penalties from 3 times “damages” to 3 times amounts “paid or approved.”

Adds liability for false claims made to government grantees and contractors

Plaintiffs could sue based on claims that already publicly disclosed if add “new” information that substantially increases recovery, and defendants could not move to dismiss on this ground

# Stark Law Update

Keeping up with Stark Law changes

- Phase III Final Rule (09/05/07)
- Final CY2009 IPPS Rule (08/19/08)

# Stark Law Update

## *Final CY 2009 IPPS Rule (08/19/2008)*

- Prohibition on certain “per-click” space and equipment lease arrangements (both direct and indirect)
- Prohibition on certain percentage-based space and equipment lease arrangements (both direct and indirect)
- Prohibition on “under arrangement” arrangements
- Adoption of new temporary non-compliance exception for signature requirements
- Modification of physician “stand in the shoes” rules
- Modification of “no amendments” position
- Adoption of “bright line” rule for a period of disallowance
- Adoption of burden of proof rule for claim denial appeals

# Per-Click and Percentage-Based Space and Equipment Leases

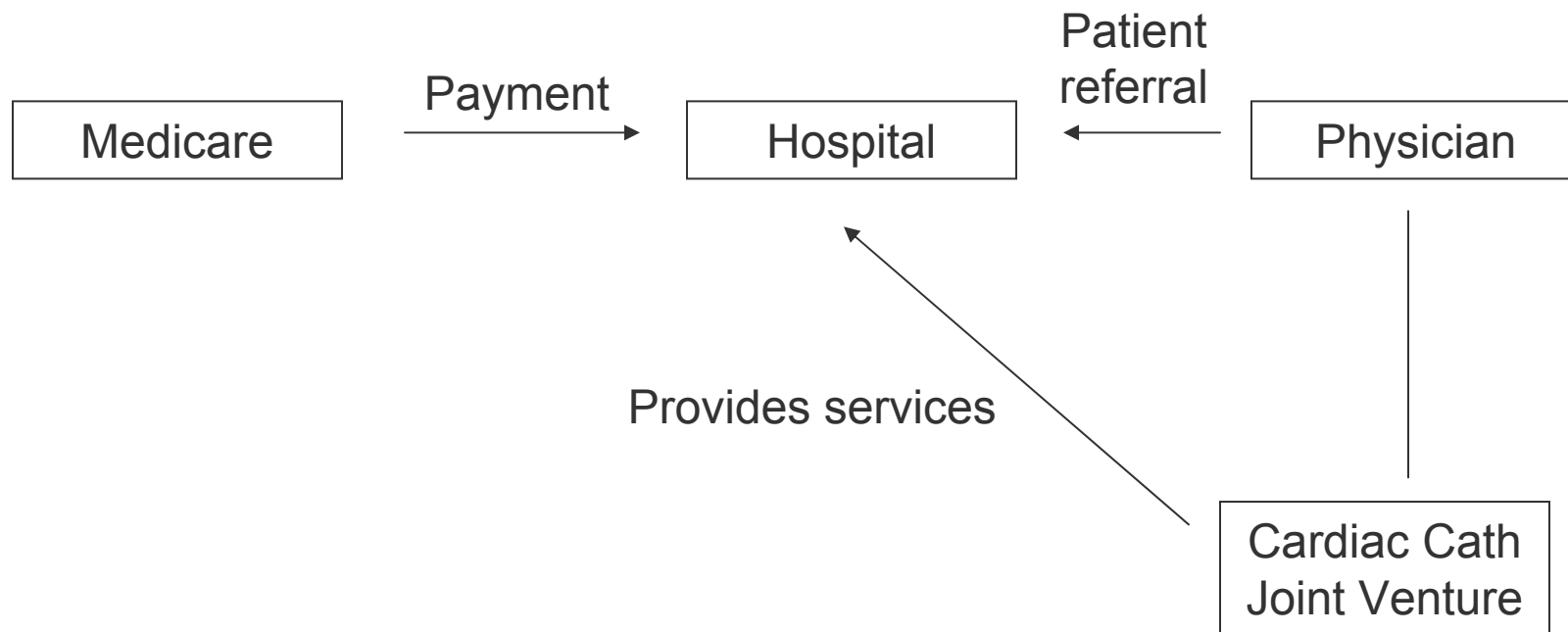
Effective 10/01/09 rental charges for space or equipment may not be determined based on:

- a percentage of the revenue raised, earned, billed, collected, or otherwise attributable to the services performed or business generated in the office space; or
- per-unit of service rental charges, to the extent that such charges reflect services provided to patients referred by the lessor to the lessee.

Prohibition applies to both direct and indirect compensation arrangements

# “Under Arrangement” Arrangements

CMS has expanded definition of “entity” to include both person or entity that bills for DHS and person or entity that performs DHS (Effective 10/01/09)



# Impacted Arrangements Hospital “Under Arrangements”

The change to the definition of “entity” will prohibit any referring physician from providing or owning an interest in any entity that provides services “under arrangement” to a hospital, including:

- Diagnostic imaging (PET/CT/MRI) services
- Radiation therapy (IMRT/IGRT) services
- Stereotactic radiosurgery services
- Ambulatory surgery services
- Cardiac catheterization services
- Sleep lab services

# Impacted Arrangements Hospital “Under Arrangements”

The change to the definition of “entity” should not impact:

- Lithotripsy services “under arrangement” arrangements with urologists who refer (*Am. Lithotripsy Soc. V. Thompson* provides that lithotripsy is not a DHS even when billed as an outpatient hospital service)
- “Under arrangement” arrangements with physicians who do not “refer” for the under arrangement services (e.g., radiologists for diagnostic imaging services)

# Impacted Arrangements

## Turn-Key Management Arrangements

The change to the definition of “entity” may potentially prohibit any turn-key management services or similar arrangement in which an entity owned, in whole or in part, by referring physicians provides all or substantially all of the space, equipment, supplies, personnel and/or services necessary for the operation of an AH hospital department, program or service, including:

- Diagnostic imaging (PET/CT/MRI)
- Stereotactic radiosurgery
- Outpatient surgery
- Cardiovascular surgery
- Cardiac catheterization

# Impacted Arrangements

## Turn-Key Management Arrangements

The change to the definition of “entity” should not impact:

- Diagnostic imaging center management arrangements with radiologists that do not “refer” for diagnostic imaging services
- Radiation therapy center management arrangements with radiation oncologists that do not “refer” for radiation therapy services
- Turn-key management services arrangements with other physicians who do not “refer” for the services provided in such department or program

But, prohibitions on per-click or percentage-based compensation may potentially limit compensation options.

# New Temporary Non-Compliance Exception - Signature Requirements

The law is not violated if:

- The compensation arrangement between the hospital and referring physician fully complied with an exception, except with respect to the signature requirement; and
- The failure to comply with the signature requirement is remedied
  - within 90 calendar days if the failure to obtain the signature(s) was inadvertent; or
  - within 30 calendar days if the failure to obtain the signature(s) was not inadvertent.

This exception may be used only once every 3 years with respect to the same referring physician.

# Modifications and Amendments

## Current CMS Formal Position

CMS has formally taken the position (73 Fed. Reg. 48697) that parties may modify or amend compensation and other material terms so long as each of the following criteria are satisfied:

- The agreement, as amended, satisfies the requirements of an applicable exception
- The new compensation (or compensation formula) is determined before amendment is implemented, and formula can be verified objectively;
- The new compensation (or compensation formula) does not take into account volume or value of referrals or other business generated by referring physician(s) and
- The new compensation (or compensation formula) must remain in place for at least one year from date of amendment

# Modifications and Amendments

## Comments and Observations

- New “rule” applies to all exceptions that include a 1-year term requirement
- CMS has informally indicated that the parties may amend an agreement during the first year
- CMS has informally indicated that the parties may amend an agreement any number of times and at any time
- CMS has informally indicated that the parties must amend and extend if less than 1 year remaining on term of agreement

# Disallowance Period

Period of disallowance begins when financial relationship fails to satisfy requirements of applicable exception and ends no later than:

*Unrelated to compensation:*

the date that the financial relationship satisfied all of the requirements of an applicable exception

*Compensation Related:*

Where noncompliance due to the payment of excess compensation (i.e., more than FMV), date on which all excess compensation returned, and financial relationship satisfies all requirements of applicable exception, or

Where noncompliance due to payment of insufficient compensation (i.e., less than FMV), date on which all additional required compensation paid, and financial relationship satisfies all requirements of an applicable exception

# Stark Law Update

- Minimal impact on hospital-physician services arrangements (medical director, call coverage, professional services, etc.)
- Significant impact on hospital “under arrangement” arrangements
- Potentially significant impact on “block leasing” and other similar JV arrangements involving referring physicians
- Modest relief for “technical” violations
- Significant changes to physician “stand in the shoes” rules
- Significant change to CMS position regarding amendment

# MedPAC Report to Congress

- Increase payment rates for the acute inpatient and outpatient prospective payment systems in 2010 by the projected rate of increase in the hospital market basket index, concurrent with implementation of a quality incentive payment program
- Reduce the indirect medical education adjustment (IME) in 2010 by 1 percentage point to 4.5 percent per 10 percent increment in the resident-to-bed ratio
- Require the Secretary to submit a report, based on a proposed disclosure of financial relationships report, of the types and prevalence of financial arrangements between hospitals and physicians
- Require all manufacturers / distributors of drugs, biologicals, medical devices, and medical supplies to report to the Secretary their financial relationships with: physicians, physician groups, and other prescribers; pharmacies and pharmacists; health plans, pharmacy benefit managers, and their employees; hospitals and medical schools; organizations that sponsor continuing medical education; patient organizations; and professional organizations

# Physician Payments Sunshine Act

The Physician Payments Sunshine Act, reintroduced 01/22/09, designed to increase transparency in the relationship between physicians and manufacturers of drugs, devices, or medical supplies for paid under Medicare, Medicaid, or SCHIP

- Includes physician-manufacturer financial arrangement disclosure requirements and reporting requirements for any payments or anything of value given by manufacturers to physicians
- Requires drug and device manufacturers to report on a quarterly basis anything of value given to physicians, including gifts, compensation, honoraria and travel reimbursement
- Reporting to include name of physician, value and date of payment, purpose of payment, and what, if anything, received in exchange
- Secretary of HHS must create website and post payment information

# DFRR Stark Compliance Audit

Initiated May 2007, withdrawn April 2008. Finalized in IPPS 07/31/08 Regs

Unclear whether OMB will further defer audit or allow CMS to proceed

Appx 400 Hospitals will have 60 days to ID all financial relationships with physicians (member of physicians' immediate family) including direct and indirect investments, during 2006 cost reporting year(s): worksheet, certification, and copies of all relevant documents

- Physician Recruiting Agreements
- Office Space Leases
- Equipment Leases
- Personal Services Agreements
- Medical Staff Benefits

CMS announced it would not impose \$10,000 per day penalty until  
(1) letter to hospital inquiring as to reason for failure to respond, and  
(2) hospital request of good cause extension

# Automating Compliance Programs



Compliance **360**<sup>o</sup>

ComplianceNet

# Automating Compliance Programs

**TRAINING HOSPITAL**      **PROFESSIONAL SERVICES AGREEMENT**  
 TH-8821-AR1-2008

**Basic Information**

|                                  |  |
|----------------------------------|--|
| John Doe, M.D.<br>Anesthesiology | <b>Administrative Information - Summary</b><br>Compliance Review Date: 3/6/2009<br>Approval Status: Pending Compliance Review<br>Transaction Posted Status: Active<br>Agreement Status: Draft<br>90 Day TNC Used: No |
|----------------------------------|--|

Other Arrangements with Facility  
Equipment Lease

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**THIS IS AN AMENDMENT**

First Amendment Effective Date: 3/9/2009  
**Reason for Amendment**  
 > This is the First Amendment to that certain Professional Services Agreement dated October 1, 2008 (the "Existing Agreement").  
 > The parties hereby agree to expand the term of the Existing Agreement for an additional one (1) year period from the current expiration date of September 30, 2010 until September 30, 2011 (the "Extension Period").

**Services**  
 Services for Cardiology Department:  
 Read and Interpret EKGs.

**Additional Services**

Additional Services Include: serve on Hospital's emergency room on-call panel, as reasonably requested by Hospital; participate in risk management, quality assurance and peer review programs, as reasonably requested by Hospital; accept third-party insured patients and referrals of patients which are made by members of the Medical Staff, subject only to the limitations of scheduling and Practitioner's professional qualifications; assist Hospital management with all preparation for, and conduct of, any inspections and on-site surveys of Hospital conducted by governmental agencies or accrediting organizations; cooperate with Hospital in all litigation matters affecting Practitioner or Hospital, consistent with advice from Practitioner's legal counsel.

| Financial Terms   | Terms & Renewals  | Additional Terms   |
|---|---|--|
| Periodic Amt: \$100.00 per Hour<br>Maximum/Cap: \$2,000.00 per Year | Term: 10/1/2008 to 9/30/2009<br>Length: 12 Months, 0 Days<br>Renews Automatically: 2 x 12 Months<br>With Renewal(s): 10/1/2008 to 9/30/2011<br>Total Length: 36 Months, 0 Days<br>Non-Renewal Notice Period: 30 Days<br>Termination with Cause: 30 Days<br>Termination without Cause: 60 Days | Time Commitment: Full-time<br>Minimum: 20 Hours per Week<br>Maximum: 40 Hours per Week<br>Relationship: Independent Contractor<br>Indemnification: Traditional |

**Supporting Information**

**Need for Service/Community Benefit**  
 Qualified physician needed for interpretation of EKG tests, as requested by Hospital.

**Qualifications**  
 Board Certified  
 Number of Years of Experience: 10  
 Duly licensed in the State of California and board certified in the specialty of cardiology.

**Fair Market Value**  
 Outside FMV Analysis Completed  
 Sending to Legal

| Contacts  | Guaranty                | Attestation            |
|---|-------------------------|------------------------|
| Facility Contact: Ken Harvey<br>Attorney: Jennifer Yoo<br>Attorney: Dan Settelmayer | Is There a Guaranty: No | Received/Uploaded: Yes |

Transaction Summary Report      Page 1      TS Date: 3/3/2009

**LATHAM & WATKINS LLP**

## ComplianceNet

Home

**Transaction Launch**

Reports  
 Execution Documents  
 Model Documents  
 Supporting Documents

**Nonmonetary Compensation Tracking**

Guidelines  
 Policies & Procedures  
 HIPAA  
 Compliance Calendar  
 Contacts  
 Help  
 About ComplianceNet  
 Recent Updates  
 Client Alerts

Agreement Information

Practitioner's Name: Doe, John  
 Transaction Number: TH-5072-AR0-2005  
 Agreement Name: Practitioner Recruitment Agreement

Post to Legal    Save    Contract    Function: Basic

**Basic**    Terms    Other

Basic Information

- Basic Information

Generate Document Wizard - Microsoft Internet Explorer

**Generating Document**

The server is generating the document.

The document will be generated with the information saved for transaction <TH-5072-AR0-2005>

Estimated time: 60 second(s).

Progress bar: [██████████]

Next >    Cancel