Physician Recruitment Agreements
*The DOS and DON’Ts of Income Support*

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Objectives

- Consider the regulatory environment with a focus on Stark mandates
- Establish oversight to avoid breach; discuss tools and protocols for eligibility of monitoring compliance
- Solutions to remain compliant through remedies and corrective actions (*hint: it’s all in monitoring*)
**Regulatory Landscape**

- False Claims Act (FCA)
- Anti-Kickback Statute (AKS)
- Physician Self-Referral Law (Stark)
- Exclusion Authorities
- Civil Monetary Penalties (CMP)


**Resources**
Stark Law:
Recruitment Exception

Permits a hospital to provide payments to a group practice or sole practitioner to induce a physician to relocate to the hospital's primary service area to become a member of the hospital's medical staff.

Recruitment payments in the form of a loan/support agreement is forgiven over time through community service requirements.

What Are the Requirements?

- Written agreement signed by all parties
- Financial assistance cannot be influenced by past or expected referrals from the newly recruited physician or group
- Recruited physician must establish medical staff privileges at the supporting hospital
- Recruited physician cannot be precluded from establishing medical staff privileges at other hospitals
Requirements to Relocate

• 75/25 Rule
  ✓ 75% of billings must be from new patients, or
  ✓ Recruited physician must relocate their practice at least 25 miles from their previous office

• Exceptions:
  ✓ Residents
  ✓ Physicians practicing in specialty for less than 1 year
  ✓ Physicians working within the prison system
  ✓ Physicians working for government-run programs (i.e.: Veterans Administration)

Case Study
Primary Service Area (PSA)

- Recruited physician must relocate their practice to the hospital’s PSA
- PSA is defined as the lowest number of contiguous zip codes from which the hospital draws 75% of its patients
- Recruited/supported physician must practice a minimum of 80% within the PSA

Case Study
## Develop a Form to Assess Compliance

### COMMUNITY, PRACTICE & RECRUIT PROFILE FOR ENTERPRISE RISK ANALYSIS

<table>
<thead>
<tr>
<th>Practice's legal name</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Practice Address + zip code where Recruit will practice &gt;80% of time</td>
<td></td>
</tr>
<tr>
<td>All Other Practice Addresses + zip codes for the Group</td>
<td></td>
</tr>
<tr>
<td># physicians currently in group</td>
<td></td>
</tr>
<tr>
<td>Has the Practice received a previous recruitment loan(s) from your organization? If so, date that the last loan was forgiven.</td>
<td></td>
</tr>
<tr>
<td>Hospital’s “Service Area”—lowest # of contiguous zip codes where lending hospital obtains &gt;75% of its inpatient volume</td>
<td>Attach service area zip codes from latest independent market analysis</td>
</tr>
<tr>
<td>Community Needs Assessment—deficit in Hospital’s Service Area for Recruit’s specialty</td>
<td></td>
</tr>
<tr>
<td>Other than maintenance of a full-time practice in lending hospital’s Service Area (&gt;80%), describe community service expectations of recruit during loan &amp; forgiveness periods.</td>
<td></td>
</tr>
</tbody>
</table>

## Acquire Details

<table>
<thead>
<tr>
<th>Name of recruited physician, MD/DO, State of License + NPI</th>
<th>Attach physician's CV</th>
</tr>
</thead>
<tbody>
<tr>
<td>Recruit's Specialty/Board Certification(s)</td>
<td></td>
</tr>
<tr>
<td>Is recruit: (a) intern, resident, fellow or in practice &lt;1 yr.; or (b) for last 2 yrs., full-time employment with Federal or State prison system, Dep't of Defense or Veterans Affairs, or Indian Health Services?</td>
<td>If yes, skip next 2 questions.</td>
</tr>
<tr>
<td>(a) Provide the name, address + zip code of all hospital(s) &amp; ASC(s) within 25 miles of the lending hospital where the recruit is currently privileged; &amp; (b) Does the recruit plan to remain privileged there during the loan &amp; forgiveness periods?</td>
<td></td>
</tr>
<tr>
<td>If recruit is moving practice &lt;25 miles, provide rationale to support reasonable belief that at least 75% of recruit's patients in the new practice have not been seen by him/her in last 3 yrs.</td>
<td></td>
</tr>
<tr>
<td>Other than the lending hospital, name of hospitals, including address &amp; zip code, where recruit plans to practice during the loan and forgiveness periods.</td>
<td></td>
</tr>
<tr>
<td>Anticipated effective date of agreement</td>
<td></td>
</tr>
<tr>
<td>Anticipated effective date of medical staff privileges at lending hospital</td>
<td>Cannot occur before agreement is signed by all parties. If it does, the Site cannot proceed with the loan.</td>
</tr>
</tbody>
</table>
Use a Checklist & Get Approvals

**CHECKLIST**

<table>
<thead>
<tr>
<th>Recruitment Support Type</th>
<th>Expense Less Revenue Agreement. Forgivable line of credit.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Duration of Support</td>
<td>1 year or 2 years</td>
</tr>
<tr>
<td>Amount of support desired</td>
<td></td>
</tr>
<tr>
<td>Maximum amount of line of credit/loan</td>
<td>(cap)</td>
</tr>
<tr>
<td>Maximum monthly allowance</td>
<td></td>
</tr>
<tr>
<td>Maintenance of full-time practice in Service Area &gt;80%</td>
<td>2 years for each year of support</td>
</tr>
<tr>
<td>No conditions on referrals to lending hospital &amp; no restrictions to be privileged at other hospitals</td>
<td></td>
</tr>
<tr>
<td>Loan Amount does not take into account the volume or value of referrals of recruit or group to the lending hospital</td>
<td></td>
</tr>
</tbody>
</table>

**APPROVALS**

- Chief Financial Officer:
- Chief Operating Officer:
- Vice President of Business Development:
- General Counsel:
- President:

Attach/Include Collateral

- Copy of practice’s PSA with recruit
- Term of Contract
  - Is it less than loan + forgiveness periods?
  - Must be for full-time employment
  - Terms of noncompete if recruit leaves group + other practice restrictions
  - Must accept all patients, regardless of ability to pay
- Copy of Lease (only if entered because of recruit). Timeshare ineligible
  - Term of Lease
  - Is it less than loan + forgiveness periods?
- Copy of latest independent market assessment, including all attachments
  - Verify that practice address is within the lending hospital’s “Service Area” under Stark.
- Copy of FMV analysis approval for requested loan amount
- Copy of recruited physician’s CV

EXECUTIVE SUMMARY/PROPOSAL

<<insert narrative>>
**Additional Considerations**

- Financial assistance must be consistent with an independent fair-market value assessment.
- Loan support arrangements are intended to assist with losses associated with recruiting a new physician *only*.
- **Cannot** be a revenue stream for the group.

**A Few Key Points**

- Stark requires loan to be no more than “minimally necessary” to recruit the physician into the PSA - additional money on the maximum loan “to share the risk” should not be permitted even though it may still be consistent with FMV.
- Collections from retiring (or overloaded) physician need to be factored in and the loan limit reduced accordingly.
- Demonstrate commitment to the community by having a full-time lease within the PSA.
- If moving less than 25 miles, the recruited physician must meet the 75% new patient criterion and completely give up the practice they are moving from (e.g. continuing call coverage at previous hospital - this is not permissible under Stark).
- Any income earned from outside sources must be added to the revenue which reduces the amount borrowed (e.g. medical directorships, call pay, etc.) – collections must be provided from all sources, not just within the PSA.
**Warning!**

- If the physician practice guarantees repayment on behalf of the recruited physician as a way to shield the recruited physician from any real liability to fulfill his/her community obligation

- To the extent that a physician practice guarantees the obligations of the recruited physician, and indemnifies the recruited physician against repayment of those obligations, the indemnification would create a remunerative relationship between the recruited physician practice and the recruited physician (and potentially between the physician practice and the hospital) that could implicate the fraud and abuse laws, including the physician self-referral law and the anti-kickback statute
Build Safeguards

1. Pledge of Collateral Against the Loans: there is a risk to include this safeguard when there is no intent to enforce it and no likelihood that it is enforceable.

2. Ending the Lending Period Early: there is no longer the right for the physician/group to end the lending period and commence the forgiveness period once the recruit’s practice becomes profitable – thus shortening the commitment to the community.

3. Loan Balance: once the recruited physician reaches breakeven, the loan balance will be tracked and paid down during the reminder of the lending period thus reducing the taxable event from the 1099 and insulates the parties from providing a windfall.

4. Events and Default: loan program holds the recruit responsible for repayment of events caused by the recruit, and the group responsible for repayment of breaches caused for the group.

5. Default Interest and Repayment: the entire balance (principal and interest) is due immediately rather than over 24/36 months at a higher interest rate thus eliminating potential fights between the hospital and physicians and unneeded subjectivity which places the hospital at risk.

6. Substitute Physician: no longer included in the contractual template – if the facts/circumstances warrant a substitute physician (or a repayment plan), then at that time, the organization will enter a new “settlement” agreement addressing the agreed upon resolution.

Monitor Compliance of Community Need

- Periodic (every 1 – 3 years) community needs assessment is conducted by an outside vendor to assess surplus/deficit in all specialties within the PSA.

- Recruitment incentives can only be provided if there is a demonstrated community need (deficit) for the recruited physician’s specialty.

- Forgiveness of such recruitment incentives is conditioned on certain community service obligations, which include a commitment to stay within the PSA for a certain period of time.
  - 1 year support = 2 years of community service with the PSA.
  - A total of 3 years altogether.
Continually Evaluate

• Loan is based on recruited physician’s “direct” expenses such as wages, benefits, etc.
• Line of credit is established within fair-market-value whereby monthly draws are offset by the previous month’s collections for the recruited physician

Anticipate Change

• Amount borrowed is forgiven if the physician continues to practice within the sponsoring hospital’s PSA for pre-established forgiveness period

Questions?
Thank you

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