

# 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*)

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# Regulatory Landscape

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

<https://oig.hhs.gov/compliance/physician-education/index.asp>

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# Resources

The collage features several key resources:

- Office of Inspector General:** U.S. Department of Health and Human Services. Navigation: About OIG, Reports, Fraud, Compliance, Exclusions, Newsroom.
- Compliance:** A large banner with the word "Compliance" in a stylized font.
- A Roadmap for New Physicians:** A slide titled "Avoiding Medicare and Medicaid Fraud and Abuse" with three downward-pointing arrows.
- Advisory Opinions:** A slide titled "Advisory Opinions" with text: "In accordance with section 1128(d)(b) of the Social Security Act (42 U.S.C. 1320a-7d(b)) and 42 CFR part 1008, OIG issues advisory opinions about the application of OIG's fraud and abuse authorities to the requesting party's existing or proposed arrangement. As required by the statute, advisory opinions are being made available to the public." Below this, it states: "One purpose of the advisory opinion is to provide meaningful advice on the application of the Medicare and Medicaid fraud and abuse laws and other OIG sanction statutes. Note, however, that advisory opinions should not be relied upon only by the requesting party."
- The Medicare Learning Network®:** mlN KNOWLEDGE • RESOURCES • TRAINING. Text: "Free educational materials for health care professionals on CMS programs, policies, and initiatives. Get quick access to the information you need." Categories include: Publications & Multimedia (Publications, MLN Matters Articles, Multimedia), News & Updates (MLN Connect® Newsletter, Electronic Mailing Lists, Social Media), Events & Training (Calls & Webcasts, Web-Based Training), and Continuing Education (Earn continuing education credit).
- CMS.gov:** Centers for Medicare & Medicaid Services. Navigation: Medicare, Medicaid/CHIP, Medicare/Medicaid Coordination, Private Insurance, Innovation Center, Regulations & Guidance, Research, Statistics, Data & Systems, Outreach & Education. Footer: OPI HOME | RESOURCES | SPOTLIGHT | EVENTS | REPORTS & GUIDANCE | REPORTING FRAUD.
- MEDICARE QUARTERLY PROVIDER COMPLIANCE NEWSLETTER:** Guidance to Address Billing Errors. Volume 9, Issue 3.

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## 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

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## 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

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## 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)

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## Case Study

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## 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

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## Case Study

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## Develop a Form to Assess Compliance

COMMUNITY, PRACTICE & RECRUIT PROFILE FOR ENTERPRISE RISK ANALYSIS	
Practice's legal name	
Practice Address + zip code where Recruit will practice >80% of time	
All Other Practice Addresses + zip codes for the Group	
# physicians currently in group	
Has the Practice received a previous recruitment loan(s) from your organization? If so, date that the last loan was forgiven.	
Hospital's "Service Area"—lowest # of contiguous zip codes where lending hospital obtains >75% of its inpatient volume	Attach service area zip codes from latest independent market analysis
Community Needs Assessment—deficit in Hospital's Service Area for Recruit's specialty	
Other than maintenance of a full-time practice in lending hospital's Service Area (>80%), describe community service expectations of recruit during loan & forgiveness periods.	

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## Acquire Details

Name of recruited physician, MD/DO, State of License + NPI	Attach physician's CV
Recruit's Specialty/Board Certification(s)	
Is recruit: (a) Intern, resident, fellow or in practice <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?	If yes, skip next 2 questions.
(a) Provide the name, address + zip code of all hospital(s) & ASC(s) within 25 miles of the lending hospital where the recruit is currently privileged; & (b) Does the recruit plan to remain privileged there during the loan & forgiveness periods?	
If recruit is moving practice <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.	
Other than the lending hospital, name of hospitals, including address & zip code, where recruit plans to practice during the loan and forgiveness periods.	
Anticipated effective date of agreement	
Anticipated effective date of medical staff privileges at lending hospital	Cannot occur before agreement is signed by all parties. If it does, the Site cannot proceed with the loan.

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## Use a Checklist & Get Approvals

CHECKLIST	
Recruitment Support Type	Expense Less Revenue Agreement. Forgivable line of credit.
Duration of Support	1 year or 2 years
Amount of support desired	
Maximum amount of line of credit/loan	(cap)
Maximum monthly allowance	
Maintenance of full-time practice in Service Area >80% No conditions on referrals to lending hospital & no restrictions to be privileged at other hospitals	2 years for each year of support
Loan Amount does not take into account the volume or value of referrals of recruit or group to the lending hospital	
APPROVALS	
Chief Financial Officer:	
Chief Operating Officer:	
Vice President of Business Development:	
General Counsel:	
President:	

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## 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>>

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## 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*

**X Cannot** be a revenue stream for the group

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## 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

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<b>PHYSICIAN RECRUITMENT EXPENSE WORKSHEET</b>	
<b>Permitted Direct Expenses</b>	
	<b>Beverly Crusher, MD</b>
<b>PHYSICIAN EXPENSES</b>	
Medical Staff Initial Application Fees	\$ 1,000.00
Medical Staff Dues	\$ 600.00
Physician Salary/wages	\$ 180,000.00
Physician Health/Life insurance benefits, worker's compensation	\$ 13,000.00
* Estimated Physician Malpractice insurance	\$ 45,000.00
** Staff: certified medical assistant salary (1.0 FTE)	\$ 45,000.00
EMR and billing expense	\$ 25,000.00
Answering Service Fee	\$ 250.00
Cell phone	\$ 540.00
Physician Moving Expense (Maximum allowance \$20k)	\$ 20,000.00
<b>TOTAL PHYSICIAN EXPENSES</b>	<b>\$ 330,390.00</b>
<b>Current business that will shift from practice to Dr. Crusher = 5%</b>	<b>\$ 16,492.50</b>
<b>Total Income Support</b>	<b>\$ 313,897.50</b>
<small>* Expense will be allocated to include insurance coverage applicable to the Lending Period.  ** To expense MA wages against the line of credit, Group must provide documentation that the MA was hired by Group on or around the time that Physician begins employment.</small>	

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## 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

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## 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 remainder 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

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## 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



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## 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

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## Questions?

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Thank you

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