

# PHYSICIAN PRACTICE COMPLIANCE CONFERENCE



October 1-3, 2008 | Philadelphia, PA | Doubletree Hotel Philadelphia

## How to Operationalize Stark

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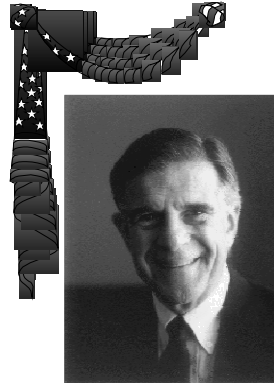
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## Stark

*"The road is long with  
many a winding turn that  
leads us to who knows  
where . . . He ain't heavy,  
he's our brother"*

*He Ain't Heavy, He's My Brother,  
Written by B. Scott and B. Russell, 1970*



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## **Stark Is:**

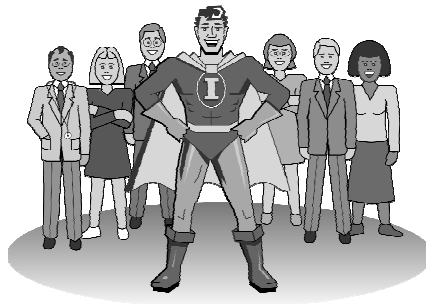
- *Confusing*
- *Broad*
- *Frustrating*
- *Anti-Capitalism*
- *Misunderstood*
- *Disliked by Physicians*
- *Loved by Lawyers\**



\*Not really, but it does contribute to the kids' college fund

## **FMV Documentation**

*Fair market value documentation is the key component to most Stark exceptions. Without clear and convincing documentation, DHS entity may not be able to defend the financial arrangement.*



## FMV Sources

- *National benchmark sources (i.e., MGMA, Sullivan Cotter)*
- *Third-party offers*
- *Counter-offers*
- *Valuation experts (i.e., real estate appraisers)*

## Technical Violations



*Please show me the  
technical violation  
exception.*

See exception for certain arrangements  
involving temporary non-compliance.  
§ 411.353(f)

## Technical Violations

- *Expired contract*
- *No contract*
- *Financial terms modified without written document*
- *Financial terms modified during first year*
- *Wrong description of service*
  - Square feet
  - Hours
- *Gifts/benefits to physician exceeds \$338 per year*

## Technical Violations

- *For financial arrangements without contract, see if arrangement meets one of the following exceptions:*
  - Arrangement does not involve a designated health service
  - Arrangement with hospital not related to designated health service (§ 411.357(g))
  - Employment (§ 411.357(c))
  - Payment by physicians (§ 411.353(i))
  - Signature – effective October 1, 2008, 90 days if inadvertent and 30 days if not inadvertent

## The Monsters in the Closet

**42 USC § 1320a-7b(a)(3)**

*Whoever...having knowledge of the occurrence of any event affecting ... his initial or continued right to any such benefit or payment ... conceals or fails to disclose such event with an intent to secure fraudulently such benefit or payment ... when no such benefit or payment is authorized*

*Felony/up to \$25,000 fine/5 years imprisonment*

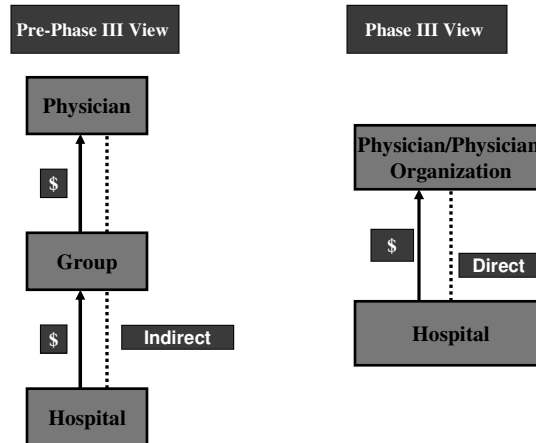


## Direct Compensation Arrangement Created in Phase III with Physicians and their Physician Organizations

- *“Stand in the Shoes”*
- *42 CFR 411.354 (c) (ii) - A physician is deemed to have a direct compensation arrangement with an entity furnishing DHS if the only intervening entity between the physician and the entity furnishing DHS is his or her physician organization. In such situations, for purposes of this section, the physician is deemed to stand in the shoes of the physician organization*

## Direct Compensation Arrangement Created in Phase III with Physicians and their Physician Organizations

*“Stand in the Shoes” continued*



## Direct Compensation Arrangement Created in Phase III with Physicians and their Physician Organizations

- *“Stand in the Shoes” continued*
- *Implemented due to CMS’s concern that arrangements between DHS entities and group practices are often viewed as outside the application of the Stark Law*
  - For example, an arrangement that did not meet the Stark Law’s definition of a direct compensation arrangement and that also failed to meet one of the prongs of the indirect compensation arrangement definition may allow a physician to make referrals to the entity for the furnishing of DHS without violating the Stark Law’s referral prohibition.
- *Phase III definition applies to new arrangements or renewals entered into after September 5, 2007.*
- *Grandfather provision for arrangements that were “properly structured to comply with the indirect compensation arrangements exception”*

## Operational Requirements

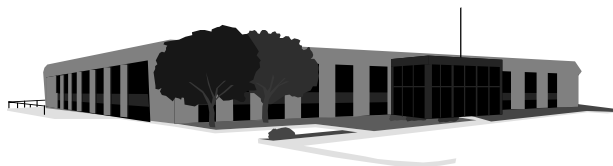
- *Contract Management Database*
- *Centralized or Structured Decentralized Filing System*
- *Fair Market Value Documentation Process*
- *Structured Financial Arrangement Approval Process*

## Operational Issues with Stark Exceptions

- *Rental of office space*
- *Rental of equipment*
- *Bona fide employment relationship*
- *Personal service arrangements*
- *Physician recruitment*
- *Gifts and benefits (non-monetary compensation up to \$338 and medical staff incidental benefits less than \$29)*

## Office Space

- *Square foot measurement*
- *Real estate appraisals*
- *Gross lease v. triple net lease*
- *Payment of increases in operating expenses*
- *Tenant improvements*
- *Time share arrangements (vacancy factor, calculation of daily charge, office supplies and equipment, personnel)*
- *Exclusive use*
- *No percentage-based leasing arrangement*
- *No per click rental for referrals from lessor*



## Equipment

- *Monitoring usage*
- *Independent FMV documentation*
- *Shared usage*
- *Exclusive use*
- *No percentage-based leasing arrangement*
- *No per click rental for referrals from lessor*





## Employment

- *Align productivity with compensation benchmarks*
- *Productivity bonuses based on services performed personally by the physician (not required if use in-office ancillary exception with group practice)*
- *Productivity compensation mechanisms (RVUs, collections, gross charges)*
- *Administrative v. Clinical Services*



## Personal Service

- *Time sheet v. no time sheet (See Exhibit A)*
- *Annualized payment v. hourly payment*
- *Work with payroll to ensure accurate beginning and end of arrangement*
- *One-year requirement (early termination clause)*

## Recruitment

- *Service area v. “geographic area served by the hospital”*
- *Establishing need: counting physicians v. other indicators (i.e., wait time, complaints)*
- *Length of income guarantee*
- *Length of forgiveness*
- *Other financial incentives in addition to income guarantee (i.e., signing bonus, moving expenses, recruitment fee)*
- *How much is reasonable?*
- *Security/collateral (group, future home)*

## Recruitment

- *Incremental expenses*
- *Reconciliation (See Exhibit B)*
- *Forgiveness and taxes*
- *Restrictions on practice*
- *Group issues*
- *Gaming the income guarantee – is it reasonable to require equitable distribution of procedures and payors to recruited physician?*

## Gifts and Benefits \$338 per year v. \$29 per benefit

- *Tracking (See Exhibit C)*
- *Physician cannot solicit*
- *Business dinners*
- *“Trinkets” v. marketing*
- *Focus on value, not cost*



## Gifts and Benefits \$338 per year v. \$29 per benefit

- *Allocating Gift (\$100 plant to four physicians)*
- *Meal delivered to physician office also consumed by office staff*
- *Hospital advertisement with reference to physicians*



# Policy

## Signatory Authority Policy

	AVP	VP	SVP	CEO	DEAN
• Supply/Purchase	X				
• Leases			X		
• MD Group			X		
• Recruitment					
• Research					X
• I.T.					
• PSAs					

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## Performing a Stark III Assessment Developing the Tools & Processes to Implement the Current Requirements

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*“But we do have a contract – its been automatically renewing since 1988”*

*It may be time to do another call for contracts*

*and*

*It may be time to do a complete assessment of what is going on out there in your organization*

## **34 Stark Exceptions**

*Most Often Used*

### *Physician services*

- » In-office ancillary services
- » Rental of office space
- » Rental of equipment
- » Bona fide employment
- » Personnel services arrangements
- » Physician recruitment
- » Non-Monetary compensation
- » Fair market value compensation

## TOOLS AND PROCESSES

- *Contract Review & Approval Policy*
- *Centralized Contract Database*
- *Assessment Plan*
- *Monitoring Plan*

## Institution Wide Contract Policy

- *Requires review by legal & compliance*
- *Applies to medical staff, university, research, hospital, ambulatory, administrators and vendors.*
- *Process for final version approval before execution*
- *Allows unmodified templates*

## Policy

- *Identify lead responsible person*
- *Forward draft and approval form*
- *Forward confirmation of FMV*
- *Unmodified templates scanned to database & approval form sent to legal*

## Related Policies

- FMV
- Billing for Items/Services
- Physician Practice Acquisition
- Prohibition and Kickbacks
- Waiver of Co-Payments
- Professional Courtesy
- Business Gifts
- Tenant Rental
- Prohibition on Self Referral

## Policy

### *Arrangement/Contract Approval Form*

- Signed by legal & compliance prior to contract execution
- brief description
- parties
- proposed execution date
- physician or immediate family member involved
- lead responsible person
- individual expected to sign

### *Attach final negotiated contract*

- FMV confirmation
- Summary of key terms

## Centralized Contract Database

- *Buy or build software application*
- *Call for contracts announcement*
- *Interview all Sr. Admins/VPs and Medical Staff Dept. Chairs*
- *Have them identify key administrators & communicate you are coming*
- *Visit, interview about what is going on*
- *Collect contracts*
- *Develop “arrangements” review list*



## Database

- *Review old contracts for legal sufficiency*
- *Start new process for new contracts*
- *Clean up “arrangements” and write contracts*
- *Develop audit plan for “new” contracts*
- *Track amendments*

## Research Contracts

- *Understand current process with Sponsors*
- *Insert legal review*
- *Audit sufficiency*

## Templates

- *For internal legal/compliance use*

### *PSA's (our MDs/your MDs)*

- » Leased staff to private practices
- » Offer letter
- » Vendor
- » Space Lease
- » Timeshare/subleases
- » Equipment lease
- » Administrative services

## Templates

For administrators (if unmodified)

- Dean's office PSA's
- Offer letter
- Vendor
- Space lease

## Tools

*Gather all needed information up front*

- *Timeshare Questionnaire*
- *PSA Questionnaire*

## Assessment Plan

- *Administrator Interviews concerning*
  - › Transactions
  - › Arrangements
  - › Payments
- *With Private MDs*
- *With Employed MDs & external MDs/organizations*

## Assessment Plan

*Give the Administrator examples of*

- Transactions
- Arrangements
- Payments

## Assessment Plan

*Space Leases*

- Sit down with Property Management
- Get out the blueprints
- Collect & centralize files
- Legal sufficiency reviews of current Leases
- FMV tools

## Assessment Plan

- *Space Leases – Fair Market Value*
- *Internal/on site: develop methodology for internal cost*
- *annual real estate comparables*
- *dedicated space*
- *common space*
- *External/offsite: real estate comparables – when possible*
- *average of offers of some market*
- *independent valuation service advice*
- *develop choice*
- *develop methodology*

## Assessment Plan

- *Equipment Leases – FMV*
  - Purchase cost
  - Depreciation
  - Exclusive use
  - Per click
- *Staff Leases – FMV*
  - Actual salary
  - Fully loaded (benefits and skills update)
  - Are invoices occurring?
  - Are payments occurring?

## Assessment Plan

### *Recruitment*

- Who does it at your organization?
- Centralize analysis - proforma
  - strategic initiatives
  - approval process
- Develop policies for income guarantees
  - employed MDs in private practices offices
  - restrictive covenants

## Assessment Plan

### *Physician PSA/Leases*

### *FMV salary – AAMC / MGMA*

## Assessment Plan

- *Non Monetary Compensation (NMC)*
  - policy
  - education
  - process for reporting
  - tracking
  - pay backs for \$338 - \$507

## Monitoring Plan

- *Take high risk / high problem areas from assessment*
  - Put those on a monitoring/audit plan
  - Do random audits of money flow
    - Leases paid on time
    - Interest penalties charged per policy
    - Payments from accounts titles as physicians services, fees, etc.