Our Discussion

- Why spend valuable resources auditing Physician Arrangements?
- Auditing v. Monitoring and Proactive v. Reactive reviews
- What data to gather in developing the question sets.
- Conduct a mock audit of a Medical Directorship
- Define and interpret audit findings
- How to report results effectively
Why spend valuable resources auditing Physician Arrangements?

It’s the Law

- Physician Self-Referral Law (“Stark”)
  - Physician may not refer patients nor bill Medicare (or other federal payors) unless arrangement with referring entity fits within an exception.

- Anti-Kickback Statute
  - A criminal law that prohibits the knowing and willful payment of “remuneration” to induce or reward patient referrals.

- False Claims Act
  - It is illegal to submit claims for payment to Medicare or Medicaid that you know, or should know, are false or fraudulent.
Save Yourself the Trouble

- Anti-kickback Statute - Stark Law - False Claims Act Penalties
- Mitigating Provider Liability
  - Refund overpayments
  - Whistleblowers
- The Regulatory Climate
  - Increases in government enforcement
  - Allegation that compensation is not Fair Market Value, not Commercially Reasonable, and that Compensation takes into account referrals.

Auditing v. Monitoring

Auditing
- Formally, disciplined approach
- Independent
- Objective
- Confirmations before disclosures
- Corrective actions orders
- Focused

Monitoring
- On-going approach
- Independent (not necessarily)
- Trends/Spot Check
- Implementing new rules
- Audit follow-up
- Progress Checks
- Identification for Audit

Tomato v. Tomahto
Proactive v. Reactive

**Proactive**
- Eliminating problems before they have a chance to manifest
- Concurrent reviews
- Reduce financial, legal, environmental, reputational and safety risks
- Aim

**Reactive**
- Responding to events after they have happened
- Prospective Reviews
- Possibility of fines is much higher due to long periods of time where you are managing towards non-compliance
- Target

Information from this presentation will focus on reactive reviews.

---

Types of Physician Arrangements

- Call Coverage
- Chairperson
- Medical Director
- Employment
- Leases
- Honorariums
- Recruitment
- Teaching
- Income Guarantees
- Subsidy/Stipends
- Clinical Services
- Management & Billing
- Transfers
- Real Estate
First Things, First!

..Get your p.o.s.s.e. together.

**Plan**

**Occurrence**

**Scope of Payments**

**Sample Size**

**Endorsement**

---

### Plan•Occurrence•Scope•Sample•Endorsement

- Create a Formalized Plan
  - Who is accountable?
  - Use SMART Goals
- Decide How Often?
  - Monthly, Quarterly, Semi-annually (it’s your choice!)
  - Have a routine in which there is an even flow
- Layout Scope of Payments
- Determine your Sample Size and Method
- Get backing from Legal, AP, CMO, Governing Body
What’s Next?

Roping in the data and developing the question sets.

Roping in the Data

- Physician Contract List w/in-house responsible parties
- Actual Contract
  - Schedule describing the services performed
- Detailed List of Physician Payments
  - Date paid
  - Amount paid and/or requested
  - Services rendered
- Physician Call/Time Sheets or Attestations
  - Physician’s signature
  - Approver’s signature
- List of Fair Market Values
  - Company’s appropriate productivity-based compensation formula or benchmark surveys.
Steer Your Information

What’s Next?

Crosswalk the Statutory Requirements into Audit Questions
Medical Directorship

Medical Director services are formalized in the Personal Services exception to the Stark Law (42 C.F.R. § 411.357 (d)).

STARK LAW REQUIREMENT
Arrangement is set out in writing, is signed by the parties, and specifies the services covered.

AUDIT QUESTION
Is there a properly signed agreement specifying the services to be performed?

Scope of Service

STARK LAW REQUIREMENT
The arrangement covers all of the services to be furnished by the physician to the entity.

AUDIT QUESTION
Does the agreement incorporate or otherwise reference other agreements between hospital and physician?
### Reasonable & Necessary Test

<table>
<thead>
<tr>
<th>STARK LAW REQUIREMENT</th>
<th>AUDIT QUESTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>The aggregate services covered by the arrangement do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement.</td>
<td>Does the agreement comply with the averages for services performed by other Medical Directors of the same specialty for the hospital?</td>
</tr>
</tbody>
</table>

### Time Frame

<table>
<thead>
<tr>
<th>STARK LAW REQUIREMENT</th>
<th>AUDIT QUESTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>The duration of each agreement is at least 1 year.</td>
<td>Is the term of the agreement for at least 1 year?</td>
</tr>
<tr>
<td>If terminated within the first year, was another agreement entered into?</td>
<td>Does this agreement replace a pre-existing agreement?</td>
</tr>
</tbody>
</table>
3-Prong Compensation Test

STARK LAW REQUIREMENT

The compensation to be paid over the term of each arrangement:
- Is set in advance;
- Does not exceed FMV; and
- Does not take into account the volume or value of any referrals or other business generated between the parties.

AUDIT QUESTION

Does the agreement specify the amount of physician compensation?
Is there evidence of a FMV determination?
Does the compensation structure measure the volume or value of the physician’s referrals?

Question Set

Is the time sheet documentation adequate to support the payment made?
Is the agreement currently effective at time of service?
Is there evidence of FMV determination?
Does the compensation structure measure the volume or value of the physician’s referrals?
Does the agreement replace the pre-existing agreement?
Is the term of the agreement for at least 1 year?

Is there a properly signed agreement specifying services?
Does the agreement specify the amount of Physician compensation?
Did the appropriate authorizing parties sign?
Does the agreement incorporate or otherwise reference other agreement between hospital and physician?
What's Next?

Conducting the Mock Audit

The Essentials

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Time Sheet</th>
<th>Payment Posting</th>
</tr>
</thead>
</table>

**Agreement**
- Conducting the Mock Audit
  - The Essentials
  - Agreement
  - Time Sheet
  - Payment Posting

**Time Sheet**
- Payment Posting

**Payment Posting**
- Agreement

**Accountable**
- Payment Date: 11/29/2015
- AP Pay: Tight Tunes
- GL: 190615
- Vendor: Bob Smith, MD
- 3436 Cherry Lane, Anytown, USA 02345
- Medical Director, Inc.
- Amount: $1,498.25

**Total Non-Billed**
- Amount: $0.00

**Notes**
- Submitted: 11/29/2015 10:49:00 AM
- Approved: Ron Ransford 11/29/2015 10:49 AM
Adequate Payment

- Is the time sheet documentation adequate to support the payment made?

<table>
<thead>
<tr>
<th>Date</th>
<th>Time (Hours)</th>
<th>Category</th>
<th>Description</th>
<th>Approve Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/3/2016</td>
<td>1</td>
<td>Meetings</td>
<td>Met w/ Anne C to discuss department policy</td>
<td>OK</td>
</tr>
<tr>
<td>10/2/2016</td>
<td>0.5</td>
<td>Scheduling</td>
<td>Reviewed and approved call and coverage schedule</td>
<td>OK</td>
</tr>
<tr>
<td>10/1/2016</td>
<td>1.5</td>
<td>Education</td>
<td>CME</td>
<td>OK</td>
</tr>
<tr>
<td>10/2/2016</td>
<td>1.25</td>
<td>Meetings</td>
<td>NCCO Task Force</td>
<td>OK</td>
</tr>
<tr>
<td>10/3/2016</td>
<td>3</td>
<td>PI</td>
<td>E&amp;O data program</td>
<td>OK</td>
</tr>
</tbody>
</table>

Total Hours Entered: 6.35
Rate: $225.00/hr

Submitted: Bob Smart, MD 11/2/2016 8:39 AM
Approved: [Signature] 11/5/2016 2:46 PM

Properly Executed Agreement

- Is there a properly signed agreement specifying the services to be performed?

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth above.

SMALL TOWN MEMORIAL HOSPITAL

Name: [Signature] Giljeil Gibson

SMALL TOWN MEMORIAL HOSPITAL

Name: [Signature] [Title]

Date: 9/15/2016

PHYSICIAN

Name: [Signature] [Title]

Date: 10/11/2016
Other Business Relationships

Does the agreement incorporate or otherwise reference other agreements between Hospital and Physician?

12. Other Business Arrangements. All other formal business relationships and arrangements between the Parties are listed and memorialized in Exhibit C hereto. The terms of this Agreement and its execution or termination have no effect on the arrangements listed in Exhibit C.

Commercial Reasonableness & Business Justification

Does the agreement fall within the medium of services performed by other Medical Directors of the same specialty for the Hospital?

4. Compensation for Services. Hospital shall compensate Physician an hourly rate of $225.00 for services performed under this Agreement. Physician’s hourly rate has been determined to be the fair market value for services rendered under this Agreement by professionals in the Physician’s specialty. Payment for services under this Agreement shall not exceed seven (7) hours monthly, or eighteen-thousand nine hundred ($18,900) in the annual aggregate.
Duration

• Is the term of the agreement for at least 1 year?

Pre-existing Agreement

• Does this Agreement replace a pre-existing agreement?

Does the current agreement:
• Replace another within the 1st year (for same or similar services)?
• Overlap with an agreement currently in effect?
• Specifically mention that it replaces another agreement?
Compensation

- Does the agreement specify the amount of Physician compensation?
- Does the compensation structure measure the volume or value of the Physician’s referrals?

4. **Compensation for Services.** Hospital shall compensate Physician an hourly rate of $225.00 for services performed under this Agreement. Physician’s hourly rate has been determined to be the fair market value for services rendered under this Agreement by professionals in the Physician’s specialty. Payment for services under this Agreement shall not exceed seven (7) hours monthly, or eighteen-thousand nine hundred ($18,900) in the annual aggregate.

Fair Market Value Analysis

- Is there evidence of FMV determination?
# Organization Specific

- Did the appropriate authorizing parties sign the agreement?
- Was the agreement effective at the time services were performed?

**What are your organizations priorities for physician contracts?**

*These would make great audit questions!*
Documenting the Findings

Scoresheet
What’s Next?

Reporting Results to the Compliance Committee and Determining Whether ACP Should Apply

Compliance Committee Reporting

- Depending on the structure of your committee, most members may be in positions to assist in the corrective action process. Take advantage of that captive audience.

- The most valuable changes occur prior to payments being processed. Be prepared to offer guidance on the implementation of better controls.

- Scoresheets will help deliver the findings to the group in an easy to understand format.
To ACP or not to ACP?

- Attorney-Client Privilege should not be used liberally to protect every audit the department undertakes.
- Consider the scope of your audit program and alternatives to ACP.
- Being diligent in the early stages will give you an indication of whether there are major problems within your organization. Present this information to counsel to help determine whether ACP should apply.

*Remember: The ultimate decision to privilege the audit is that of counsel.*

Questions & Discussion
Contact Info

Juliette Stancil, HonorHealth Compliance Officer
    Juliette.Stancil@honorhealth.com
    480.882.4133

Anne Brummell, HonorHealth Compliance Program Manager
    Anne.Brummell@honorhealth.com
    480.882.5509