

# Compliance Risk Checklist

How does your organization ensure that its financial relationships with physicians are compliant with federal regulations? To help partner organizations quickly determine whether or not they might have a physician contracting compliance risk, we assembled a checklist. If your organization's compliance process does not include these elements, you could be at risk if audited.



Use this checklist to either structure a physician contracting compliance program from scratch, or to review your internal processes.

## CHECKLIST:

**Are you up to date on Stark Law and Anti-Kickback Statute enforcement actions and regulations?**

Stark is a strict liability statute, meaning you don't have to intend to violate the law to be held liable. In our experience, many organizations aren't aware of the regulation's intricacies or severe penalties. Not only are monetary penalties high, but failure to comply can mean loss of Medicare eligibility. CMS audits are extremely costly and can run into the millions of dollars with penalties and fees.

**Does your organization have contracts for all contracted services/positions?**

Organizations must document all contractual arrangements with physicians, with payment terms set in advance that are unrelated to volume of services. This includes both compensated and uncompensated services. Work with administrators and chiefs of staff to ensure all contracted positions have signed agreements that include payment rates, defined services and time requirements, the expiration date, and a method for regular monitoring. Remember: even though the Stark Final Rule doesn't mandate having a contract, you must have a signed arrangement in place, and it is still a best practice to have a formal contract.

**Do you know how many physician contracts your organization currently has?**

On average, small community hospitals have between 50–60 physician contracts. For larger organizations or health systems, physician arrangements can spiral to hundreds or even thousands. Understanding the scope of your physician contracts will help you identify potentially risky contracts. Knowledge of total physician contracting spend will help with budgeting, planning, and other financial activities.



## **Do you store all your contracts in a centralized location?**

When organizations deal with hundreds, or even thousands, of contracts that renew throughout the year, organization is critical for successful and timely renegotiations and audits. If your organization doesn't have a contract management system, obtain or make one. Create an automated process for renegotiation beginning three or six months before the expiration date. Decide on a consistent process for addressing and executing renewals across all contracts, including updated FMV analysis.



## **Do you have guidelines for handling exceptional agreements?**

When your organization determines it must compensate a physician above fair market value, create a standardized process for reviewing such exceptional contracts. Stark doesn't prohibit paying physicians above a certain threshold, but organizations must have justification for the rates. When developing a step-by-step process to address exceptions, have specific goals in mind. What criteria define a true exception? How do you enforce that definition? Who needs to sign off on exceptions? What happens to renewals? Most strong compliance programs require senior executives to sign off on exceptional agreements and many require board approval or at least review by an executive or finance committee of the board.



## **Do you have a rigorous, consistent process for determining FMV?**

How does your organization determine fair market value? Do you employ external consultants? Does your team produce internal FMV opinions and document methodology? Whatever method, document the rationale and stick to a consistent method. Some organizations use high-quality market data to determine FMV for most (80% or more) physician contracts, and tap into consultants to provide guidance for complex and/or high cost agreements that exceed a specified benchmark level. This method reduces FMV costs by reducing the number of individual FMV opinions. Do your research, and feel confident that your method supports compliance best practices.



## **Do you have staff responsible for daily management of physician contracting?**

Given the complexities of managing physician relationships and contracting, designating a point person on your team to handle contract management, documentation and the approval process is a solid investment. While this person may not handle physician contracts full time, she should have access to internal contract data, benchmarks or market data to support decision-making, a tool to help her view and organize contracts, and a formal process to document FMV. She should also have a reporting relationship with the director or executive responsible for physician contracting at a senior level.



## Does your organization have executive oversight?

Designating an executive for strategic and operational management of physician contracts is crucial. Smaller organizations may designate the CEO or CFO to lead; larger organizations with more resources may choose to place physician contracting under a compliance officer or the general in-house counsel. Whomever your organization chooses, it is critical that the executive be aware of federal regulations and penalties for non-compliance. They should also either craft or oversee the creation of the compliance and documentation process. Minimally, the executive signs off on the organization's physician contracting compliance program. In the unfortunate event of an audit, this executive should be very familiar, comfortable, and confident with the compliance process that she oversees.



## Do you perform an annual audit and internal review of all contracts?

An annual audit of contract compliance will identify potential patterns of non-compliance or outliers that have not been properly documented for fair market value. The audit process should include a review of key contract terms and timesheets as well as the approval and compliance documentation process. A good contract management system or comprehensive benchmarking tool can simplify the audit process.



## Have you reviewed recent CIAs?

If you are overwhelmed by physician contracting compliance, or are unsure what elements are essential in a good compliance process, a great way to create structure is by reviewing requirements outlined in recent corporate integrity agreements (CIAs). CIA's are agreements reached after a violation or settlement between the OIG and a noncompliant provider that outline the steps required to prevent future violations. CIAs can be used to structure a well-functioning contract compliance program and contract terms that may prevent future issues with improper payments.

## QUESTIONS?

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