



# Improving Physician Contract Compliance



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The OIG was active in its pursuit of Stark compliance in 2015. Recent settlements and advisories offer a number of lessons to help shape effective contract compliance programs. Start the new year with a thorough review of your physician contract compliance process and policies: make 2016 the year to improve your organization's physician compliance program with these nine tips:

### **1. Ensure each physician position or service has a contract.**

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.

Although call coverage agreements are expensive and often command the most attention, the OIG's 2015 settlements and Fraud Alert demonstrate that special attention should be given to medical director, leadership and other administrative services arrangements. If your organization is not documenting *both* commercial reasonableness *and* fair market value for administrative positions, you may be putting the organization at risk. Ensure that you have policies in place for determining FMV for all arrangements and for archiving the necessary documentation.

### **2. Store all contracts in a centralized location.**

When you 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 to six months before the expiration date. Decide on a consistent process for addressing and executing renewals across all contracts, including updated FMV analysis. Benchmark values change, and not always to the upside.



### **3. Develop 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 approval process 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 contracts 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.

### **4. Create or update guidelines for handling exceptional agreements.**

When your organization determines it must compensate a physician above your standard for 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.

### **5. Designate 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 to a senior executive.



**6. Keep abreast of Stark and Anti-Kickback 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. Many organizations unfortunately aren't aware of the regulations' intricacies or severe penalties. Not only are monetary penalties high, but failure to comply can mean loss of Medicare reimbursements. CMS audits are extremely costly and can run into the millions of dollars for penalties and fees.

**7. Educate physicians, as they too are at risk of potential violations.**

In 2015 with the Yates Memorandum, the OIG made it clear that physicians are also at risk for noncompliant arrangements. The OIG published a Fraud Alert which warns physicians that they could take on personal risk under the Anti-Kickback Statute for noncompliant compensation arrangements. At least one 2015 settlement involved physicians with noncompliant contracts.

**8. Audit all contracts and the internal review process annually.**

An annual audit of contract compliance will identify potential patterns of noncompliance or outliers that have not been properly documented for fair market value or commercial reasonableness. The audit process should include 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, particularly if it compares the terms of your contracts with external benchmarks.

**9. Get into the OIG's mind: review 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 to review requirements outlined in recent corporate integrity agreements (CIAs). CIAs are the settlement agreements reached between the OIG and a noncompliant provider that outline the steps required to remedy violations. CIAs are often the best and clearest means of interpreting Stark regulations and they can be used to help structure a well-functioning contract compliance program and contract terms that may prevent future issues with improper pay.