

# How MSOs Help Medical Practices with Office and Equipment Rental

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A Managed Service Organization (MSO) has numerous benefits. At the core, an MSO helps doctors and other healthcare professionals separate the administrative side of a medical practice from the clinical side. The clinical side is regulated in many ways through federal laws, state laws, and the regulations and policies of state and local medical boards.

## Federal and state laws the regulate medical practices

Stark Law is a federal law that prohibits referrals by doctors to entities called designated healthcare services that the doctors (or a close relative) have a financial interest in – when medical practices submit bills for payment to Medicare and Medicaid. Stark Law imposes civil penalties including fines and the possible cessation of the medical practice for violations.

The Anti-Kickback Statute (AKS) regulates referrals to and from physicians by entities such as pharmaceutical companies if the referral is based in any way on an improper financial incentive such as the payment of cash, positions on medical boards that are just ways to pay a doctor who does little or no work for the payment, vacations, and other benefits. The AKS applies to bills submitted to Medicare, Medicaid, and any other federal healthcare agency that pays medical bills such as TRICARE.

Violations of the AKS can result in civil and criminal penalties. Violations of Stark Law or the AKS may also result in complaints that the doctor/medical practice violated the federal False Claims Act or a state false claim law because bills to federal agencies such as Medicare or Medicaid were made fraudulently.

Physicians who have an ownership interest in a medical practice also need to understand their state's corporate practice of medicine laws. These laws regulate who can have an ownership interest in a medical practice.

The aim of all these laws – Stark Law, the AKS, the False Claim Act, and the corporate practice of medicine laws is to ensure that the health of the patients comes before any financial interests of the physicians.

## The benefits of an MSO

An MSO helps medical practices do more than just tend to the business side of a medical practice. An MSO can help medical practices show that the business side of the practice is separate from the clinical side by specifically meeting the exceptions to Stark Law and the safe harbors to the AKS that are defined in those statutes. An MSO can help show that the medical malpractice is not violating either the federal or state False Claims Acts and is also meeting the requirements of the state and local medical boards. An MSO can help a medical practice come into compliance with corporate practice of medicine laws.

As we've discussed, MSOs supply the business side of a medical practice – with human resources, payroll and employee benefits, education, compliance, and other non-medical matters. While MSOs mainly provide services for physicians,

Physicians Practice Group states that “MSOs can help hospitals and other medical ventures. MSOs can be owned by different entities including hospitals, physician groups, investors, and others.” MSOs can also provide the capital for a medical practice and then offer the practice office space, equipment, and other essentials.

In order for an MSO to show the medical practice is compliant with the various federal and state laws that prioritize patient safety over financial profit, a medical practice should review the specific statutory exceptions and safe harbors, what tasks the MSO can and can't perform, and what contractual arrangements should be entered into between the medical practice and the MSO with an experienced healthcare lawyer.

## **WHEN USING A MANAGEMENT SERVICES ORGANIZATIONS (MSO) IS THE RIGHT CHOICE FOR YOUR MEDICAL PRACTICE**

Managed Services Organizations help physicians focus on practicing medicine by freeing doctors from many administrative tasks. Failure to consult with an MSO healthcare lawyer can cause civil and [...]

### **What tasks can MSOs perform?**

Some of the general tasks MSOs can perform, according to Physicians Practice Group, include:

- Medical coding for billing, payment, and collection to help ensure False Claims Act compliance and other federal/state compliance issues
- Educate and train the medical staff
- Compliance with HIPAA (Health Insurance Portability and Accountability Act), OSHA (Occupational Safety and Health Administration) regulations, FMLA (Family and Medical Leave Act), CLIA (Clinical Laboratory Improvement Amendments of 1988), and state laws
- Ensuring that the medical and administrative staff have the proper credentials
- The information technology needs of the medical practice
- Various financial issues including procuring supplies and medications, audits, financial management, payroll and benefits, marketing, sales
- Risk management
- Scheduling
- Transcription of medical records
- Public relations
- Disaster management
- Quality assurance
- Contract negotiations
- Insurance risks
- Other administrative aspects of the medical practice

According to Physicians Practice MSOs can:

- Provide business services that allows the medical practice to be quite independent of the MSO
- Own/buy the tangible assets of the practice and manage the assets directly In this type of MSO- the MSO owns the office space, equipment, and supplies – and leases the space/equipment/supplies back to the medical practice.

- *“That is, the physicians continue to practice in their existing office space and own their medical records, keep their existing insurance plan contracts, staff, and so on, but no longer own the administrative expense and burden of managing those assets.”* This makes it hard for the medical practice to terminate the agreement with the MSO but can help the medical practice meet its compliance issues and shifts the burden of administering the medical practice to the MSO.

## **Stark law exceptions and office space rentals**

Stark law provides numerous exceptions to help medical practices come into compliance. One exception is for compensation arrangements involving payments for office space made by a lessee to a lessor.

*“This exception would also apply when a solo-practice physician establishes such a relationship through his/her practice or wholly owned legal entity, or where a physician stands in the shoes of his/her physician organization for purposes of the office space lease arrangement.”*

Stark Law provides the following exception for the rental of office space: Payments for the use of office space made by a lessee to a lessor should comply with this Stark Law exception if the arrangement meets the following requirements:

- The lease agreement must be in writing, signed by the parties (such as the MSO and the medical practice), and specify what property is covered.
- The length of the office space rental must be at least one year. If the lease contract terminates with or without cause, the parties (such as the MSO and the medical practice) can't enter into a new lease contract for the same space for the remainder of the first year of the original lease contract.
- The office space that is rented/leased cannot be more than what is reasonable and necessary “for the legitimate business purposes of the lease arrangement” and shouldn't be shared with the lessor or any person/entity related to the lessor. – unless certain specific conditions set forth in the Stark Law exception statute are met.
- The rental charges during the term of the lease should be set in advance and should be *“consistent with fair market value.”*
- The rental charges during the term of the lease should not be based in any manner on:
  - *“The volume or value of referrals or other business generated between the parties; or*
  - *By using a formula based on*
    - *A percentage of the revenue raised, earned, billed, collected, or otherwise attributable to the services performed or business generated in the office space; or*
    - *Per-unit of service rental charges, to the extent that such charges reflect services provided to patients referred by the lessor to the lessee.”*
- The lease contract should be *“commercially reasonable even if no referrals were made between the lessee and the lessor.”*
- If the lease arrangement expires after a term of at least 1 year, a holdover lease arrangement immediately following the expiration of the lease arrangement satisfies the other requirements of the exception and other specific conditions set forth in the Stark Law exception statute.

Generally, tenants can make payments for common areas such as central reception areas if the lease payments meet certain pro-rate share and fair market value conditions.

## **Stark law exceptions and equipment rentals**

In many respects, the Stark Law exception for renting equipment is similar to the exception for office space. Again, for our discussion, the MSO should be considered the lessor and the medical practice the lessee – though Stark Law permits the physician to be either the lessor or the lessee – provided the specific terms of the exception are met. The equipment rental exception:

*“Would also apply when a solo-practice physician establishes such a relationship through his/her practice or wholly owned legal entity, or where a physician stands in the shoes of his/her physician organization for purposes of the lease arrangement.”*

The essential terms of the lease arrangement require:

- That the rental or lease agreement is in writing, signed by the parties, and specifies what equipment is covered.
- The equipment rented or leased should meet the reasonable and necessary business needs of the medical practice and be used exclusively by the lessee (not shared with the lessor or people/entities related to the lessor).
- The lease should be one year or more. Similar termination conditions to the office space rental requirements apply.
- The rental charges are set in advance, are based on fair market value, and are not based on the volume or value of any referrals or other business generated between the parties (the MSO and the medical practice), or other criteria set forth in the statute.
- The lease contract would be commercially reasonable even if there were no referrals between the parties.
- *“A holdover month-to-month rental for up to six months immediately following an agreement with a term of at least one year is allowed,”* provided certain conditions are met.

## **The AKS and – office space rentals and equipment rentals**

The Office of Inspector General does permit similar office and equipment agreements between an MSO and a medical practice.

Normally, payment for rental space wouldn't violate the AKS – provided the payment isn't below fair market value or the tenant/medical practice rents more than is commercially necessary. Payments below fair market value or for more spaced than commercially necessary could be considered “kickbacks.”

Generally, for either the office space rental or equipment rental safe harbors to the AKS to apply:

- The lease must be signed by both parties (the MSO and the medical practice)
- The lease should cover the premises leased or the equipment leased.
- The lease should specify any lessor access rights.
- The length of the lease should be at least one year.
- The rental should be set forth in advance and be consistent with fair market value,
- The office space/equipment should be what is necessary for the practice and no more.

## **MSOs and the Corporate Practice of Medicine**

For more information about how MSOs can help with corporate practice of medicine compliance, please see our prior discussion of this topic.

There are some direct exceptions to the California laws that prohibit the corporate practice of medicine, such as creating a professional medical corporation. There are also strategies that can be used such as the use of a management services organization (MSO) to help ensure that the medical practice meets its financial needs while also ensuring that the care and treatment of patients are the priority.

Medical practices should consider using a managed service organization to administer the business side of their practice so the medical practice can focus on the medical side of the practice – and also help show the practice is in compliance with

Stark Law, the Anti-Kickback Statute, corporate practice of medicine laws, and other laws that serve to prioritize patient safety over financial profit.

## **EXCEPTIONS AND ALTERNATIVES TO THE CORPORATE PRACTICE OF MEDICINE**

California has a strict corporate practice of medicine law. Physicians should consider a professional medical corporation. Doctors need to be aware of Stark Law and the AKS. An MSO may be advisable.

Physicians and medical practices should contact Cohen Healthcare Law Group, PC to discuss how an MSO can help address federal and state compliance laws and regulations. Our experienced healthcare attorneys advise physicians and medical practices about healthcare compliance laws and regulations.

Contact our healthcare law and FDA attorneys for legal advice relevant to your healthcare venture.