

The MSO/Physician Contract: Compliance with Stark Law's personal service agreement and the fair market value compensation exceptions.

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Many medical practices enter into contracts with a Managed Service Organization (MSO) to help separate the clinical and administrative sides of the medical practice. There are many federal and state laws that regulate both aspects of medical practice. State medical boards also regulate medical practices in various ways.

Skilled healthcare professionals understand how MSOs can assist medical practitioners in focusing on practicing medicine while the MSOs concentrate on the medical business—complying with relevant Stark Law exceptions and other compliance requirements.

Stark Law and the AKS

The Stark Law, also known as the federal physician self-referral law, prohibits doctors from recommending that patients obtain designated health services (such as lab tests) that Medicare and Medicaid pay for from entities in which the doctor (or an immediate family member) has a financial interest—unless a Stark Law exception applies.

The federal Anti-Kickback statute (AKS) authorizes criminal penalties when entities or individuals knowingly provide or receive any remuneration:

- In return for any service paid for by a federal healthcare program, including Medicare or Medicaid.
- In return for *“purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under a Federal healthcare program.”* (Source: [Legal Information Institute](#))

Remuneration includes cash payments, vacation, positions on medical boards, and many other improper benefits. An Anti-Kickback statute (AKS) violation may result in a prison sentence of up to 5 years, fines of up to \$25,000 per occurrence, and exclusion from participating in federal healthcare reimbursement programs. Violations of the Stark Law and the AKS may also constitute a breach of the federal False Claims Act.

Doctors, medical practices, and Managed Service Organizations (MSOs) also need to understand their state's corporate practice of medicine laws, which regulate who can have an ownership interest in a medical practice.

The benefits of an MSO

An MSO helps medical practices do more than just manage the business side of a medical practice. It can assist medical practices in demonstrating that the business side is separate from the clinical side by specifically meeting the exceptions to the Stark Law and the safe harbors to the Anti-Kickback Statute (AKS) as defined in those statutes. An MSO can also help demonstrate that a medical practice is not violating the False Claims Act and is meeting the requirements of state and local medical boards. Additionally, an MSO can aid a medical practice in coming into compliance with corporate practice of medicine laws.

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?

MSOs can undertake various administrative tasks and assist medical physicians/practices in complying with the Stark Law and the Anti-Kickback Statute (AKS) if specific requirements, such as the Stark Law's personal service arrangement exception and fair market compensation exception, are met. Some of the general services that MSOs can perform, according to the Physicians Practice Group, include:

- Medical billing and collection
- Training of the medical staff
- Compliance with HIPAA (Health Insurance Portability and Accountability Act), the FMLA (Family and Medical Leave Act), and other laws
- Obtaining and verifying credentials
- IT needs
- Financial matters including marketing, payroll, procurement, and audits
- Risk management
- Scheduling
- Medical record transcription
- Public relations
- Disaster management
- Negotiating contracts
- Quality assurance
- Other administrative duties

Stark Law, MSOs, and personal service arrangements

The Stark Law provides for a personal service arrangement exception, allowing the medical practice and the Managed Service Organization (MSO) to enter into a contract where the MSO provides personal services to the medical practice, and the medical practice provides remuneration for the MSO.

Generally, services from the physician/medical practice to the MSO need to comply with the personal services arrangement Stark Law exception. Services from the MSO to the physician/medical practice need to comply with the fair market value Stark Law exception described below.

Compliance with the personal services arrangement exception requires the following:

- The personal services arrangement is set forth in writing; both the physician/medical practice and the MSO sign the contract, and the specific services that will be provided are detailed in the written contract.
- Unless the services satisfy another section (Section Z, involving the limited remuneration of a physician) of the Stark Law exceptions, the personal services arrangement should cover all the services that the physician (or an immediate family member of the physician) will provide to the MSO. This requirement is met if:
 - All separate arrangements between the entity (MSO) and the physician and the entity (MSO) and any family members incorporate each other by reference or cross-reference a master list of contracts that is maintained and updated centrally and is available for review by the Secretary upon request.
 - The master list must preserve the historical record of contracts, and a physician or family member may furnish services through employees they have hired for the purpose of performing the services, through a wholly-owned entity, or through locum tenens physicians. (Source: [Legal Information Institute](#))
- The combined services that the personal services arrangement covers must not exceed the services that are reasonable and necessary for the legitimate business purposes of the arrangement(s).
- The personal services arrangement must last for one year or longer. To comply with this requirement, if the personal service arrangement is terminated, with or without cause, the parties may not enter into the same or substantially the same arrangement during the first year of the original arrangement.
- The compensation to be paid during the duration of each personal service arrangement should be:
 - Set in advance
 - Not exceed the fair market value
 - Not consider the value or volume of any referrals or other business generated between the physician/medical practice and the MSO, unless there is a valid physician incentive plan.
- The personal service arrangement services should not involve the counseling or promotion of a business arrangement or other activity in violation of state or federal law.
- If the personal services arrangement ends after at least one year:
 - A holdover arrangement immediately following the expiration of the arrangement [should] satisfy the requirements of [paragraph \(d\)](#) if additional requirements are met.
- If remuneration to the physician is conditioned on the physician's referrals to a particular provider, practitioner, or supplier, the arrangement satisfies the conditions of [§ 411.354\(d\)\(4\)](#).

Our [skilled healthcare compliance lawyer](#) can clarify whether the physician incentive plan exception applies to the relationship between the medical practice and the MSO. The specific terms of the incentive plan exception are outlined in the Stark Law exceptions.

To gain a comprehensive understanding of how these exceptions may impact your situation, we invite you to schedule a Legal Strategy Session with our expert healthcare compliance attorney. Take proactive steps to ensure compliance and navigate the complexities of the Stark Law.

Stark Law, MSOs, and the fair market value compensation exception

The fair market value compensation exception to the Stark Law applies to compensation arrangements where the MSO provides services to the physician or medical (group) practice in exchange for remuneration from the physician/medical group. Compliance with the fair market value exception generally requires satisfaction of the following requirements:

- The arrangement between the physician/group practice and the MSO must be in writing, signed by the physician/medical

practice and the MSO, and cover services specifically outlined in the written contract.

- The writing should specify the compensation under the arrangement's terms and the timeframe for the arrangement. The arrangement, which includes services provided in return for fair market value compensation, can be for any period and include a termination clause. Renewal is allowed, one or more times, provided the terms and compensation remain consistent with the prior arrangement, though exceptions may apply.
- The compensation:
 - Must be set in advance.
 - Should be consistent with fair market value and *"not determined in any manner that takes into account the volume or value of referrals or other business generated by the referring physician."*
 - Compensation for the rental of office space or equipment may not be determined using certain formulas set forth in the Stark Law.
- The contract should be *"commercially reasonable even if no referrals were made between the parties."*
- The contract should not violate the Anti-Kickback Statute (AKS) or involve counseling, business promotion, or other activities in violation of state or federal law.
- The arrangement satisfies the requirements of § 411.354(d)(4) (directed referral requirement) in the case of certain types of physician remuneration, group practice remuneration, or other Stark Law terms.

Experienced healthcare lawyers understand how MSOs can be utilized to help medical professionals demonstrate compliance with the Stark Law, along with the conditions that must be met to fulfill those compliance requirements.

Our healthcare lawyers can also provide insights into whether the contract between the MSO and the physician/medical practice might violate the Anti-Kickback Statute (AKS) and whether any AKS safe harbors apply. Many AKS safe harbors share similarities (though not identical) with the Stark Law exceptions.

A Managed Service Organization (MSO) is a valuable method for assisting medical practices in focusing on practicing medicine while the MSO takes care of the administrative side of the practice. MSOs are also instrumental in demonstrating that a medical practice is in compliance with federal referral laws such as the Stark Law. The MSO contract itself must comply with the Stark Law and any other relevant laws. Achieving compliance often involves drafting MSO/physician practice contracts that meet the personal service arrangement and fair market value compensation exceptions of the Stark Law.

Physicians, medical practices, and MSOs are encouraged to contact Cohen Healthcare Law Group to discuss how an MSO can help address federal and state compliance laws and regulations. Our experienced healthcare attorneys provide guidance to physicians and medical practices on healthcare compliance laws and regulations.

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