

What Physicians Need to Know about Physician Contracts with Hospitals

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Both physicians and hospitals need to be aware of the numerous legal compliance issues when these health providers enter into contractual relationships. Violations of the federal laws and state laws along with violations of local medical board requirements can result in fines, suspension of a medical license, and other consequences.

Our experienced healthcare compliance lawyers review hospital/physician contracts before you sign the contracts. Often, we negotiate changes to help you meet your compliance obligations. We also advise physicians when problems arise for noncompliance with the laws, regulations, and the contract itself.

Some of the many issues we review are the following:

Stark Law and AKS compliance

Stark Law and the Anti-Kickback Statute (AKS) are both laws that are designed to ensure physicians place the healthcare of their patients first – before any financial benefits for the physician are considered. Stark Law and the AKS apply when either entity seeks reimbursement from government agencies such as Medicare and Medicaid for health services. Experienced healthcare lawyers review when these laws apply, the consequences for non-compliance, and what exceptions or safe harbors can be included in the contract to help show the healthcare providers are in compliance.

- Stark Law is a civil law that regulates referrals by a physician to a designated healthcare facility – when the physician or a family member has a financial interest in the designated healthcare facility. A common example is the referral of patients to diagnostic centers or ambulatory service centers (ASCs).
- The AKS is a criminal law that regulates referrals to any entity in which the physician has received some type of financial incentive (cash, vacations, a directorship, or other benefits) in order to entice the physician to make the referral to that entity. A common example is when physicians recommend certain medications based on the pharmaceutical that made those medications paying the physician to recommend the pharmaceutical company's drugs.

Other compliance laws include the False Claims Act and the Civil Monetary Penalties Law. The False Claims Act governs the fraudulent/dishonest submission of medical bills to governmental agencies. The Civil Monetary Penalties Law regulates forms of abuse involving Medicare and Medicaid.

Other compliance laws include the state corporate practice of medicine laws. The corporate practice of medicine laws are designed to separate the practice of medicine from the profit of medicine. Corporations that are subject to the corporate practice of medicine laws cannot hire physicians to provide medical services and the corporations cannot provide the medical services themselves.

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The Stark exception and AKS safe harbor exceptions for personal service arrangements

Stark Law generally provides a specific exception for physician agreements with hospitals if the following conditions are met:

In general, the remuneration from the hospital for physician services must be:

- In writing, signed, and must identify the services to be provided.
- The contract should cover all the services to be provided.
- The *“aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement.”*
- The contract must be for at least one year.
- The compensation should be set in advance, should not exceed fair market value, and except for physician incentive plans (defined in another part of the statute), and should not take into account the volume or value of any referrals or other business generated between the parties.
- The services should not involve *“the counseling or promotion or a business arrangement or other activity that violates any State or Federal law.”*
- Should comply with other requirements necessary to protect the program or patients from abuse.’

The Physician incentive plan exception. This provision of Stark Law provides that a physician incentive plan that *“takes into account directly or indirectly the volume or value of any referrals or other business generated between the parties,”* should meet the following conditions:

- *“No specific payment is made directly or indirectly under the plan to a physician or a physician group as an inducement to reduce or limit medically necessary services provided with respect to a specific individual enrolled with the entity.”*
- Many other conditions

A ‘physician incentive plan’ means any compensation arrangement between an entity and a physician or physician group that may directly or indirectly have the effect of reducing or limiting services provided with respect to individuals enrolled with the entity [hospital].

Other requirements and conditions may also apply that experienced healthcare lawyers will review.

Physician recruitment inducements

Generally, Stark Law also provides for exceptions for hospital remuneration *“to a physician to induce the physician to relocate to the geographic area served by the hospital in order to be a member of the medical staff of the hospital, if—*

- *“The physician is not required to refer patients to the hospital,*
- *The amount of the remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician, and*
- *The arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against*

program or patient abuse.”

The AKS has a similar (but not identical) safe harbor for certain hospital/physician arrangements.

Stark exceptions and AKS safe harbors which can benefit doctors if properly created and documented require that the contracts with the physicians be in writing – if the physician is an independent contractor. It is also good practice to also have written contracts between physicians and hospitals when physicians are employees of a hospital. We'll explain what Stark, AKS, and practical legal issues apply to contractor and employment contracts.

The terms of the physician-hospital contract

In addition to addressing Stark and AKS issues, written contracts provide numerous other benefits such as determining the length of employment, when a physician can and cannot be discharged, how much the physician will receive in wages and other benefits, the duties of the physician, the duties of the hospital, the right to patient contact information, and many other issues.

The contract should establish:

- **Who the parties to the contract are.** The contract should clarify whether the party to the contract is a hospital or a medical practice/physician group. Stark Law does require that the contract clearly identify when a practice group is providing the medical services and the relationship between the group and the individual doctors. Other types of contracts we handle include physician contracts with community mental health centers, long-term care facilities, school-based health centers, and hospices.
- **The status of the physicians.** The contract should specify whether the doctor who is performing the medical services is an employee or a contractor. The contract is an indicator of status but not conclusive. Generally, the IRS standards for determining employment status will control. A key factor is whether the hospital controls the hours and work performance of the physician.
- **What services will be provided?** The physician/hospital contract should set forth the clinical services, administrative functions, and other services the doctor will provide. The contract should identify when and how these services can be assigned to others.
- **The times of service.** The contract should set forth whether the physician works full-time, part-time, or when the doctor is needed. The ability to change these schedules should also be written in the contract.
- **Where the services will be provided.** The contract should clarify where the physician will work – especially when the hospital has multiple locations.
- **Independent judgment.** The contract should make clear that the physician's primary duty is to the patient and that the physician should be able to use his/her independent professional judgment. This provision may help address any corporate practice of medicine issues.
- **Intellectual property.** Experienced healthcare contract lawyers help physicians keep the rights to any intellectual property the physicians generate during the scope of their employment.
- **Credentials.** Generally, the hospital will want the doctor to keep current with their medical requirements including board certifications, insurability, DEA registration, and the ability to participate in government programs such as Medicare. The doctor's credentials may also include any restrictions on the right to practice, Stark or AKS complaints, or any other items on their medical record which might limit their ability to provide the requested medical services.
- **Work performance.** The contract should require that the physician and hospital comply with the appropriate rules and regulations, the proper standards of care, and payer requirements. The contract should also set forth the physician's obligations to participate in various medical staff duties, comply with any investigations, and act on behalf of the patient first.
- **Medical records.** The hospital should require that doctors comply with the appropriate medical requirements – including compliance with the Healthcare Insurance Portability and Accountability Act (HIPAA). Doctors will be required to complete

any open medical records when the contract ends in a timely manner. Other medical requirements may apply including compliance with the Social Security Act. The contract should indicate who owns the medical records.

- **Supplies and staff.** The duties of the hospital. The contract should provide terms for what equipment, supplies, and staff the doctor can use – along with what office and surgical space can be used.
 - For example, the safe harbor provisions of the AKS provide that leasing agreements must be in writing and signed by the hospital and the physician. The lease must specify that premises and equipment that are included. *“If access to the space or equipment is for periodic intervals, a schedule for the use and exact lease payments must be set out in advance.”* The lease must be at least for one year. The lease payment obligations must be written in advance and based on fair market value.
- **Compensation.** Doctors deserve to be paid for their medical services. The compensation should, to comply with various federal laws and rules, be based on the fair market value of the services given the doctor’s qualification and experience. The compensation generally should not be based on the volume of the practice or the amount of any referrals. The contract should also document any signing bonuses, relocation expenses, loan repayments, and any other benefits the doctor is receiving. Hospitals, physician groups, and individual physicians should understand the Stark and AKS requirements. For example, generally, doctors cannot be paid by a hospital or physician group practice based on “ancillary services” such as lab tests that the doctor orders. There are many other considerations that affect the compensation part of the contract – such as tax considerations.
- **Additional benefits.** In addition to a salary, financial payments, and other cash considerations; the contract should include such benefits as insurance benefits, pensions and other retirement benefits, vacation time, and sick time. Another common benefit point is that Continuing Medical Education (CME) benefits (payment for the courses).
- **Referrals.** Stark Law may allow some referrals provided the specific terms of any exceptions are met. Any discussion of the referral arrangements should be in writing.

Other physician/hospital contract issues include patient collections issues, liability insurance coverage, worker’s compensation payments, the contract term, indemnification issues, how the contract can be terminated, confidentiality requirements, and post-termination requirements. Generally, California does not authorize covenants not to compete (noncompetition clauses). Other states may authorize noncompetition clauses. The contract may also have a non-solicitation clause to ensure that the physician can’t solicit patients – though there are laws that ensure that the best interest of the patient comes first that we’ll explain. There are many other provisions we’ll review such as how disputes are resolved and other issues.

Physician service agreements with hospitals must comply with Stark Law and the AKS. There are specific rules for physician service agreements in both statutes. Doctors should review with skilled healthcare lawyers the full range of legal, practical, and medical issues that each contract should address.

Physicians should contact Cohen Healthcare Law Group, PC before signing any employment contracts with a hospital or a physician’s group. Our experienced healthcare attorneys advise physicians about their federal and state healthcare compliance requirements.

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