



# LEGAL ISSUES THAT IMPACT YOUR PRACTICE

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# Disclaimer

- The SLMMS, Anders, and Lashly & Baer, P.C. are providing this material for informational and educational purposes only.
- Healthcare providers should contact their legal counsel for assistance.

## Anti-Kickback Basics

- OIG focus is whether one party is offering **remuneration** (i.e., something of value) to the other party in exchange for **referrals** which are paid by Medicare/Medicaid.
- Multiple safe harbors available to protect certain activity.
- Advisory opinion process available to get OIG opinion.

# Anti-Kickback Flashpoints

- Offering free services, staff, or equipment to physician, with hopes of referrals.
- Ex.: Reference lab provides computers to referring physician offices.
- What other “offers” have you seen?

# Anti-Kickback Flashpoints

- Paying for services that are not really needed or rendered, with hopes of referrals.
- Ex.: Hospital pays high volume orthopedic surgeon \$100K to serve as medical director, four meetings per year.
- Does this mean medical directorships are risky?

# Anti-Kickback Flashpoints

- Paying too much or too little
- Ex.: High volume surgeon offered medical office space in hospital building for \$13 sq. ft. when market rate is \$22 sq. ft.
- Ex.: Physician owns MOB; hospital rents space at \$22 sq. ft. when market rate is \$13 sq. ft.

# Anti-Kickback Flashpoints

- Hospital providing employee-type benefits to non-employed physicians.
- Physician investment in ancillary provider that is not within physician's practice area (e.g., internist investing in surgery center).

# Anti-Kickback Quick Analysis

- Is there a referral relationship?
- Is there something of value being exchanged?
- Are there Medicare/Medicaid patients?
- Is the referral source employed by the other party?



# Billing Example

- Usual and Customary Charge for service is \$100
- Patient Portion is 20% (\$20)
- Payor Portion is 80% (\$80)

# Billing Issues

- Medicare:
- Ex.: Reimbursement for service is \$100; patient portion is 20% (\$20); Medicare portion is 80% (\$80)
- What happens when physician waives patient portion? Should Medicare pay \$80? \$64? \$0?
- Demonstrated Financial Need

# Billing Issues

- Managed Care Contracts.
- What does Contract Say?
- Ex.: Vogelsmeier visits friend/family practitioner for strep throat. Physician tells front desk “N/C”. Is this allowed?

# Billing Issues

- Non-Participating Physician-We can do anything we want . . . Correct?
- Reimbursement for service is \$100; patient portion is 30% (\$30); Insurance portion is 70% (\$70)
- Can physician “N/C” patient and bill insurance \$70?

# Billing Issues

- Non-Participating Physician cont.
- It's none of their business!
- What does bill actually show?
- Has physician represented that it collected \$30 from patient?
- Physician stands in shoes of patient

# Billing Issues-Professional Courtesy

- Employees-consider making it a benefit.
- Referral Source-Risky.
- Outsiders-Better off not charging for the service.
- Don't Advertise.
- Charity Care-Adopt Policy; Apply Uniformly.

# Stark Law Basics

- Is a physician involved?
- Is there a financial relationship?
- Is there a Designated Health Service?
- Is there a referral?
- Is Medicare, Medicaid or other Federal governmental payor involved?
- Is there an “Exception”?

# Stark Law Examples

- Physician Ownership in Imaging Center
- Providing DME in practice