

MANAGING PRACTITIONER RELATIONSHIPS

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IAMSS
(11-20)

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WRITTEN MATERIALS

■ Written Materials

- Idaho Code 39-1392g, -1395 and -1396
- IDAPA 16.03.14.200 and .250
- Hospital CoPs, 42 CFR 482.12 and .22
- Sample Medical Staff Bylaws
- Sample Disruptive Physician Policy
- Sample Physician Contract
- Sample Credentialing Checklist
- Stanger, *Idaho Peer Review Privilege*
- Stanger, *Beware Excluded Entities*

MANAGING PRACTITIONER RELATIONSHIPS OVERVIEW

- Laws
 - Fraud and abuse
 - Hospital operations
 - Licensing
 - Fraud and abuse
 - 501(c)(3)
 - Antitrust
 - Others
- Conditions of participation
- Accreditation
- Contract
 - Key terms
- Bylaws
 - Key terms
- Policies
 - Key policies

PRACTITIONER RELATIONSHIP TO HOSPITAL

- Practitioners do not have a right to medical staff membership or privileges.
 - Public/govt hospitals
 - Practitioner does not have a constitutional right to privileges at a public hospital. *Hayman v. Galveston* (S.Ct. 1927)
 - Once privileges granted at a public hospital, practitioner may have a property or liberty interest requiring due process before they are terminated.
 - Private hospital
 - May generally determine whom they allow to exercise privileges.
 - Subject to laws, e.g., licensing laws, discrimination, etc.

PRACTITIONER RELATIONSHIP TO HOSPITAL

- Relationships
 - Medical staff member w/privileges; no contract
 - Privileges; no med staff membership or contract
 - Contracted practitioner w/medical staff membership and privileges
- Medical staff membership and privileges:
 - = a license or privilege to use hospital resources.
 - ≠ a contract. *Miller v. St. Als* (Idaho 2004)

HOSPITAL MAY ESTABLISH STANDARDS AND RULES

- “[N]othing in this section shall change the authority of the governing body of any health care organization to make such rules, regulations, standards or qualifications for medical staff membership as it, in its discretion, may deem necessary or advisable, or to grant or refuse membership on a medical staff.”

(IC 39-1392g)

- “[N]o provision or provisions of this section shall in any way change or modify the authority or power of the governing body of any hospital to make such rules, standards or qualifications for medical staff membership as they, in their discretion, may deem necessary or advisable, or to grant or refuse membership on a medical staff.”

(IC 39-1395)

- Hospital may establish and enforce appropriate rules and standards for practitioners who want to practice at facility.

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MILLER V. ST. ALPHONSUS (IDAHO 2004)

- *Facts:* St. Als denied medical staff privileges due to physician's alleged history of disruptive behavior.
- *Held:* Court upheld St. Als' decision.
 - Bylaws do not constitute a contract.
 - Hospital has right to establish and enforce standards.
 - Hospital must comply with statutes and bylaws.
 - Hospital gave the process due in statute and bylaws.

CREDENTIALING STANDARDS

- Statutes and regulations
 - Constitution
 - IC 39-1392g, 39-1395 and 39-1396
 - IDAPA 16.03.14.200 and -.250
 - Hospital/CAH COPs, 42 CFR 482.12, -.22 and 45 CFR 601
 - Health Care Quality Improvement Act, 42 USC 11101
- Medical staff bylaws, rules and regulations
- Practitioner contracts
- Accreditation standards
- Common law, e.g., standard in community to avoid negligent credentialing claim

HOSPITAL MAY ESTABLISH STANDARDS AND RULES

Must

- Specify credentialing standards and process in bylaws.
- Designate privileges, including admitting privileges.
- Active staff involved.
- Governing body makes final decision.
- Base decision on “reasonable criteria”, including training, competence, experience and hospital capability
- Give members due process, e.g., hearing and appeal.
- Enforce professional practices and ethical conduct.
- Reappoint every 2 years.

(IC 39-1395, 39-1396; IDAPA 16.03.14.200, -250; 42 CFR 482)

May not

- Deny membership or privileges to:
 - Competitors
 - Podiatrists

(IC 39-1392g, -1395)

- Discriminate based on age, disability, race, religion, national orientation, etc.
- Engage in unfair competition or antitrust
- Breach contract terms.

OPTIONS FOR ADDRESSING PRACTITIONER CONDUCT

Medical Staff Process	Contract Process (if contract allows)	Licensing Board Action
<p><u>Benefits</u></p> <ul style="list-style-type: none"> • Favorable to med staff • Peer review immunity if maintain privilege • HCQIA immunity comply with requirements <p><u>Concerns</u></p> <ul style="list-style-type: none"> • Med staff not skilled at addressing concerns • Med staff may be unwilling to address • Time consuming and expensive 	<p><u>Benefits</u></p> <ul style="list-style-type: none"> • Handled by administration, which has more experience in addressing such issues • More efficient • More certain outcome • Maybe peer review immunity <p><u>Concerns</u></p> <ul style="list-style-type: none"> • Dependent on contract language • No HCQIA immunity • Practitioners may complain 	<p><u>Benefits</u></p> <ul style="list-style-type: none"> • Handled by licensing board • Hospital may act based on board response • Minimizes hospital or med staff liability <p><u>Concerns</u></p> <ul style="list-style-type: none"> • Limits on reporting • May take time • No control over outcome

COORDINATE MED STAFF ACTION AND CONTRACT

Medical Staff Bylaws & Policies

- Qualifications
- Responsibilities
- Standards of conduct
- Corrective action
 - Standards
 - Process

Contract

- Qualifications
 - Conditioned on medical staff membership and privileges
- Performance standards
 - E.g., compliance with law, quality of care, timely records, disruptive conduct, etc.
- Termination
- Effects of termination
 - Effect on medical staff membership and privileges, e.g., automatic surrender of medical staff membership and privileges.

COORDINATE MED STAFF ACTION WITH CONTRACT

Sample Medical Staff Bylaws Term

- “Practitioners who contract with Hospital to provide services are subject to contract terms.”
- “In the event of a conflict between the medical staff bylaws or policies and the [practitioner’s] contract, the contract controls.”

Sample Contract Terms

- “Practitioner is subject to Hospital policies, including employment policies.”
- “In event of a conflict between the medical staff bylaws or policies and the [practitioner’s] contract, the contract controls.”
- “Upon termination of this Agreement, Practitioner’s medical staff membership and privileges shall automatically terminate unless otherwise agreed by Hospital. Practitioner shall not be entitled to the hearing and appeal rights set forth in the bylaws.”

MEDICAL STAFF BYLAWS

BYLAWS PROVISIONS REQUIRED BY LAW

- Process by which its governing body and medical staff oversee those practitioners granted admitting privileges, including credentialing and competency review.

(IC 39-1396; IDAPA 16.03.14.250)

- Medical staff authority to evaluate professional competence of applicants and members.
- Process for appointment to medical staff and delineating privileges.
- Process for hearing and appeal of those whose privileges are denied or reduced.
- Promulgation of med staff bylaws, rules and regulations.
- Means of communication with medical staff.
- Every patient is under the care of an Idaho physician.
- Physician is on duty at all times.

(IDAPA 16.03.14.200)

- Medical staff organization, including officers, committees, meetings, etc.
- Necessary qualifications, duties, and categories for med staff and nonphysician practitioners.

- Attendance at meetings.

- Require accurate and complete medical records.

(IDAPA 16.03.14.250).

- Additional requirements per COPS.

(42 CFR 482.12 and .22)

KEY BYLAWS PROVISIONS

- Bylaws are not a contract.
 - Protects against breach of contract claim.
- Medical staff membership and privileges constitute a license, not a right.
 - Protects against liberty interest claims.
- Subject to ultimate authority of the governing body.
 - See IDAPA 16.03.14.200 and -.250; 42 CFR 482.12 and 482.22
 - Allows governing body to make ultimate decisions.
- Allow medical staff to waive provisions subject to governing body approval.
 - Allows flexibility to address unique situations.

KEY BYLAWS PROVISIONS

- Basic qualifications (objective)
 - Medical school training
 - Licenses, registrations, etc.
 - Specialty board certification unless waived
 - Not excluded from Medicare/Medicaid
 - Liability insurance
 - Reside in geographic area to enable care of patients unless fit within certain categories of medical staff or requirement waived
 - Within group granted exclusive privileges
- Must satisfy basic qualifications to qualify for review by active staff.
- Failure to satisfy basic qualifications do not trigger hearing rights.
- Board may waive basic qualifications.

Reviewed by
Medical Staff
Services

KEY BYLAWS PROVISIONS

- Additional qualifications (subjective)
 - Professional competence, training, experience, proficiency, and judgment
 - Compliance with applicable laws, regulations and ethics
 - Good reputation and character
 - Ability to work professionally in nondisruptive manner
 - Commitment to provide quality care and contribute to medical staff functions
 - Physical and mental health status sufficient to enable provide quality patient care
 - Others?
- Capability and capacity of hospital

Reviewed by
Active
Medical Staff

KEY BYLAWS PROVISIONS

- Closed staff or limited staff, e.g.,
 - Physical capacity
 - Over utilization
 - Sufficient volume to maintain proficiency
 - Scheduling concerns
 - Availability of quality support services
 - Availability of required equipment
- Exclusive contracts
 - Allow for legitimate hospital concerns
 - Condition privileges on being in group with exclusive arrangement
- Competing affiliations
 - Beware IC 39-1392g

KEY BYLAWS PROVISIONS

- Basic responsibilities of medical staff members and those with privileges
 - Comply with standard of care
 - Comply with applicable laws and regulations
 - Abide by hospital and medical staff bylaws, rules and policies
 - Prepare timely and complete medical records using hospital's electronic medical records program
 - Work professionally and in non-disruptive manner
 - Refrain from harassment, discrimination, etc.
 - Participate in medical staff meetings, committees, activities, including peer review, quality assurance, compliance, etc.
 - Participate in on-call responsibilities unless waived by board
 - Report any change that may affect qualifications
 - Cooperate in fulfilling hospital's charitable purposes
 - Others

KEY BYLAWS PROVISIONS

- Medical staff categories
 - Active staff
 - Associate staff
 - Telehealth staff
 - Honorary staff
 - Others?
- Limited license practitioners
 - Cannot deny podiatrists. See IC 39-1395
- Allied health professionals
 - Pros and cons of medical staff members or not
 - Alternative corrective action process
- Residents and fellows
 - Privileges but not medical staff membership
- Allow board to reassign staff category
 - No hearing requirements

KEY BYLAWS PROVISIONS

- Appointment and reappointment to medical staff.
 - Applicant has burden
 - Process consistent with HCQIA
 - Credentialing by proxy for telehealth
 - Waiting period after adverse action
- Privileges.
 - General
 - Temporary privileges
 - Emergency privileges
 - Disaster privileges
- Authorize credentialing by proxy for telehealth.
- Provisional or probationary period.
- Waiting period after adverse action.

KEY BYLAWS PROVISIONS

- Peer review and corrective action
 - Informal process
 - Collegial interventions, additional education, etc.
 - Formal process
 - Investigation
 - Precautionary suspension
 - Automatic termination (no full hearing)
 - Failure to satisfy basic qualifications, e.g., licensure, insurance, exclusion from Medicare/Medicaid, etc.
 - Action by other facilities
 - Failure to complete records
 - Action by another peer review body
 - Hearing
 - Bases for hearing, e.g., adverse action against privileges based on professional competence or conduct that may adversely affect patient care
 - Process consistent with HCQIA
 - Governing body determination.

KEY BYLAWS PROVISIONS

- Confidentiality of credentialing process
 - Comply with peer review statute, IC 39-1392a et seq.
 - Applies to:
 - Complaints
 - Investigations
 - Proceedings
 - Documents
- Immunity to participants
 - Unclear whether it is enforceable, but better to have it than not.
- Releases
 - Unclear whether it is enforceable, but better to have it than not.

POLICIES

KEY POLICIES

- Employment
 - Medical staff
- Timely completion of medical records
 - Participation in medical staff proceedings
 - On-call coverage
 - Disruptive provider policy
 - Credentialing
 - Corrective action
 - Peer review
 - Fair hearing process
 - Confidentiality
 - Others

KEY POLICIES

- Disruptive or unprofessional practitioner
 - Define disruptive or unprofessional behavior, but not too narrowly
 - Prohibit disruptive conduct
 - Establish process, e.g.,
 - Medical staff members or persons with privileges
 - Providers with contract
 - Consider addressing under employment contract instead of through medical staff process
 - Hospital has right to make determination
 - Evaluate risks
 - Pros: more efficient, cost effective; hospital administration more skilled in addressing the issues
 - Cons: perhaps no HCQIA immunity

CONTRACT TERMS

CONTRACTS

- Employed practitioner
 - Fulltime
 - PRNs
- Independent contractor practitioners
 - Professional services agreements
 - Locum tenens
 - On-call coverage
 - Medical directors
 - Others

KEY PROVIDER CONTRACT TERMS

- Qualifications
 - Licensure without restriction.
 - DEA and state board of pharmacy authorization.
 - Able to participate in Medicare, Medicaid, and other payer programs.
 - Medical staff membership and privileges without restriction.
 - Malpractice insurance.
 - Board certification or board eligible.
 - Pass pre-employment screening.
 - Able to perform services.
 - Others
- Condition contract on qualifications.
- Failure to satisfy qualifications justifies immediate termination.

KEY PROVIDER CONTRACT TERMS

- Performance standards
 - Comply with laws and regulations; standard of care; hospital bylaws, and policies; payer requirements; third party contracts.
 - Act in professional, cooperative, non-disruptive manner.
 - Timely complete records per hospital policy.
 - Promote service line.
 - Support quality assurance, compliance and other programs.
 - Attend required meetings and participate in assigned committees.
 - Immediately notify hospital of circumstances giving rise to potential claims.
 - Adhere to such other performance standards as reasonably established by employer.
- Violation of performance standards is cause for termination.
- Repeated violation is cause for immediate termination.

KEY PROVIDER CONTRACT TERMS

- Exclusivity
 - If contract is not intended to be exclusive:
 - Confirm same.
 - Require cooperation with other providers.
 - If contract is intended to be exclusive:
 - Define scope of exclusivity carefully.
 - Allow for appropriate exceptions.
 - Condition contract and privileges on continuance of exclusive arrangement.
 - Terminate contract and privileges if provider is no longer a part of the group that has the exclusive arrangement.
 - Waive fair hearing rights if terminated.

KEY PROVIDER CONTRACT TERMS

- Termination without cause on 90 days notice.
 - Consider immediate termination if pay comp.
 - Damages if provider fails to give required notice.
- Termination with cause on x days notice + chance to cure.
- Immediate termination for certain conduct.
 - Failure to satisfy qualifications.
 - Violation of law or regulation.
 - Substance abuse.
 - Repeated violation of performance standards.
 - Performance subjects hospital to liability.
 - Others?

KEY PROVIDER CONTRACT TERMS

- Post-termination obligations
 - Terminates right to receive compensation.
 - Ensure consistent with compensation formula.
 - Return all property, keys, documents, etc.
 - Complete records before or within x days of termination.
 - Consider damages or penalties
 - Cooperate in transferring care and duties.
 - Cooperate in responding to investigations or claims.
- Termination of contract = surrender of medical staff membership and privileges unless waived by hospital.
 - No right to fair hearing process.

PRACTITIONER LICENSING STANDARDS

IDAHO MEDICAL PRACTICES ACT: BASES FOR PROFESSIONAL DISCIPLINE

“Every person licensed to practice medicine, or registered as an intern or resident in this state is subject to discipline by the board [for]:

- “Committing any act constituting a felony” or “[b]eing convicted of a felony...”
- “Providing health care which fails to meet the standard of health care...”
- “[R]evocation, suspension, or other discipline of a license to practice medicine by any other state...”
- “Failing to safeguard the confidentiality of medical records...”
- “Abandoning a patient.”
- “Engaging in a pattern of unprofessional or disruptive behavior or interaction in a health care setting that interferes with patient care or could reasonably be expected to adversely impact the quality of care rendered to a patient. Such behavior does not have to have caused actual patient harm to be considered unprofessional or disruptive.”

(IC 54-1814; *See also* IDAPA 24.33.03.150)

IDAHO MEDICAL PRACTICES ACT: BASES FOR PROFESSIONAL DISCIPLINE

Additional grounds for professional discipline:

- “Engaging in practice or behavior that demonstrates a manifest incapacity or incompetence to practice his or her profession.
- “Engaging in any conduct that constitutes an abuse or exploitation of a patient...
- “Failing to maintain adequate records. Adequate patient or client records means legible records that contain, at a minimum, subjective information, an evaluation and report of objective findings, assessment or diagnosis, and the plan of care.
- “Failing to report to the Board any known act or omission of a Board licensee or permittee that violates any provision of these rules.
- “Failing to obey any and all state and local laws and rules related to the licensee or permittee’s practice or profession.

(IDAPA 24.33.03.150)

REPORTING PHYSICIANS AND PHYSICIAN ASSISTANTS

- “A licensed physician or physician assistant possessing knowledge of a violation of section 54-1814, Idaho Code, by any other physician or physician assistant licensed to practice medicine in Idaho shall with reasonable promptness report such knowledge to the board of medicine ...,
- “[F]ailure to do so shall subject such person to disciplinary action by the state board of medicine...
- “[N]o person shall be civilly liable for communications, reports or acts of any kind made, given or handled under the provisions of this act....
- “[N]o physician or physician assistant shall be required to report, nor shall any physician or physician assistant report, any information known, learned or discovered by that person as a result of participation in peer review or access to peer review records....
- “This provision shall not relieve a health care organization of its notification obligations as set forth in section 39-1393, Idaho Code.”

(IC 54-1818)

OTHER PROVIDERS MAY HAVE SIMILAR PROFESSIONAL STANDARDS

- Other credentialed providers
 - Advanced practice registered nurses (e.g., NPs, CMWs, CRNAs, etc.)
 - Podiatrists
 - Dentists
 - Chiropractors
 - Psychologists
 - Others
- Check
 - Licensing act
 - Licensing regulations

FRAUD AND ABUSE LAWS

WHY DO YOU CARE?

- Medical Staff Services may have responsibility for:
 - Contracts for employees or contractors
 - Recruitment arrangements
 - Gifts or perks to medical staff members
 - Others?
- Violation of federal fraud and abuse laws can result in serious penalties for all involved.
 - Criminal penalties
 - Civil fines
 - Repayment of amounts received from Medicare/Medicaid
 - Exclusion from participating in Medicare/Medicaid
- Physicians, administration, and others may not recognize the issues

ANTI-KICKBACK STATUTE

- Cannot knowingly and willfully offer, pay, solicit or receive remuneration to induce referrals for items or services covered by government program unless transaction fits within a regulatory safe harbor.

(42 USC 1320a-7b(b); 42 CFR 1003.300(d))

- Violations may result in:
 - 10 years in prison
 - \$100,000 criminal fine
 - \$104,330* civil penalty
 - 3x damages
 - False Claims Act liability
 - Exclusion from Medicare/Medicaid.

(42 USC 1320a-7b(b); 42 CFR 1003.310; 45 CFR 102.3)

- “One purpose” test applies

AKS SAFE HARBORS

- Employment
- Personal services contracts
- Space or equipment leases
- Recruitment and retention
- OB malpractice insurance subsidy
- Electronic medical records support
- Others

(42 CFR 1001.952)

➤ *New safe harbors proposed*

CAUTION

Make sure any contracts, compensation, benefits, perks or gifts fit within safe harbor

ELIMINATING KICKBACK IN RECOVERY ACT (“EKRA”)

- Cannot solicit, receive, pay or offer any remuneration in return for referring a patient to a laboratory, recovery homes or clinical treatment facility unless arrangement fits within regulatory exception.

(18 USC 220(a))

Penalties

- \$200,000 criminal fine
- 10 years in prison

(18 USC 220(a))

➤ *Applies to private or public payors.*

➤ *Waiting for regulations.*

IDAHO ANTI-KICKBACK STATUTE

- Healthcare providers cannot:
- Pay another person, and other person may not accept payment, for a referral.
- Provide services knowing the claimant was referred in exchange for payment.

(IC 41-348)

- Penalties
 - \$5,000 fine by Dept of Insurance
 - Violation of Medicaid provider agreement

(IC 41-348)

ETHICS IN PATIENT REFERRALS ACT (“STARK”)

- If a physician (or a member of the physician’s family) has a financial relationship with an entity:
 - Physician cannot make referrals to that entity for certain designated health services (“DHS”) payable by Medicare.
 - Entity cannot submit a bill for payment for DHS rendered pursuant to a prohibited referral.

unless transaction is structured to fit within a regulatory exception (“safe harbor”).

(42 USC 1395nn; 42 CFR 411.353)

- Penalties:
 - Cannot bill Medicare/Medicaid for services ordered by physician.
 - Repayment of amounts from Medicare/Medicaid
 - \$25,820* per service.
 - False Claims Act liability

(42 USC 1395nn; 42 CFR 411.353, 1003.310, 45 CFR 102.3)

STARK

- Applies to referrals by physician to entities with which the physician or their family member has financial relationship.
- **Physician =**
 - MDs
 - DOs
 - Oral surgeons
 - Dentists
 - Podiatrists
 - Optometrists
 - Chiropractors
- **Family member =**
 - Spouse
 - Parent, child
 - Sibling
 - Stepparent, stepchild, stepsibling
 - Grandparent, grandchild
 - In-law

(42 CFR 411.351)

STARK SAFE HARBORS

- Employment
- Personal services contracts
- Fair market value
- Space or equipment leases
- Timeshare arrangements
- Recruitment and retention
- Non-monetary compensation up to \$416*
- Medical staff incidental benefits
- Professional courtesy
- Others

(42 CFR 411.357)

➤ *New safe harbors proposed*

CAUTION

Make sure any contracts, compensation, benefits, perks or gifts fit within safe harbor

STARK SAFE HARBOR NON-MONETARY COMPENSATION

- Items or services (not cash or cash equivalents) that do not exceed \$423/year, as adjusted per CPI.
- Not based on volume or value of referrals or other business generated between the parties.
- Not solicited by physician or physician's practice.
- If there is violation, physician may repay excess if certain conditions met.
- Entity with formal staff may provide one medical staff appreciation event annually.

(42 CFR 411.357(k))

STARK SAFE HARBOR MEDICAL STAFF INCIDENTAL BENEFITS

- Items or services (not cash or cash equivalents) by hospital to medical staff .
- Used on hospital campus.
- Offered to all medical staff members in same specialty.
- Not based on the volume or value of referrals or other business generated between the parties.
- Provided while physician is making rounds or engaged in services benefiting hospital or patients.
- Reasonably related to patient care at hospital.
- Low value, i.e., less than \$35 as adjusted for CPI.

(42 CFR 411.357(m))

STARK SAFE HARBOR PROFESSIONAL COURTESY

- Practice has formal medical staff.
- Written policy approved in advance.
- Offered to all physicians in service area regardless of referrals.
- Not offered to govt beneficiaries unless showing of financial need.
- Does not violate AKS.

(42 CFR 411.357(s); 72 FR 51064)

- But beware AKS, CMPL, state laws, and private payor contracts, especially if waive copays or engage in “insurance only billing.”

EMPLOYMENT

Stark

- Compensation must be:
 - Consistent with fair market value (“FMV”) of services.
 - Does not take into account the volume or value of referrals for DHS.
 - Commercially reasonable even if no referrals made.

(42 CFR 411.357(c))

Anti-Kickback Statute

- Compensation paid to bona fide employees for furnishing items or services payable by Medicare/Medicaid.

(42 CFR 1001.952(i))

INDEPENDENT CONTRACTORS

Stark

- Writing signed by parties.
- Compensation formula is:
 - Set in advance.
 - Consistent with FMV.
 - Does not take into account the volume or value of referrals or other business generated by the physician.
- Arrangement is commercially reasonable and furthers legitimate business purpose.
- Compensation may not be changed within 1 year.

(42 CFR 411.357(d) or (l))

Anti-Kickback Statute

- Writing signed by parties.
- Aggregate compensation is:
 - Set in advance.
 - Consistent with FMV.
 - Does not take into account the volume or value of referrals for federal program business.
- Aggregate services do not exceed reasonably necessary to accomplish commercially reasonable business purpose.

(42 CFR 1001.952(d))

RECRUITMENT AGREEMENT

Stark

- Payments by hospital to recruit.
- Written agreement signed by parties.
- Physician relocates from at least 25 miles into hospital's service area.
- Not conditioned on referrals.
- If recruit into existing group:
 - Can reimburse group for expenses directly related to recruitment.
 - Income guaranty limited to additional incremental expenses attributable to adding physician.

(42 CFR 411.357(e))

Anti-Kickback Statute

- Payment to recruit into HPSA.
- Written agreement signed by parties.
- 75% of revenues from new practice.
- Benefits provided < 3 years.
- No required referrals.
- Amount of benefits not based on referrals.
- No restriction on staff privileges elsewhere.
- Cannot discriminate against federal program beneficiaries.
- Cannot benefit any entity in a position to generate referrals.

(42 CFR 1001.952(n))

IDAHO STARK IMPLICATIONS

- Idaho does not have a state law that mirrors Stark.

But...

- Idaho Medicaid regulations allow DHW to "deny payment for any and all claims it determines are for items or services ... provided as a result of a prohibited physician referral under [Stark,] 42 CFR Part 411, Subpart J."

(IDAPA 16.05.07.200.01)

CIVIL MONETARY PENALTIES LAW

- Hospital or CAH cannot knowingly make a payment, directly or indirectly, to a physician as an inducement to reduce or limit services provided to Medicare or Medicaid beneficiaries who are under the direct care of the physician.

(42 USC 1320a-7a(b))

- Violations may result in:
 - Civil penalties of \$5,216* per violation
 - Exclusion from Medicare/Medicaid

(42 CFR 1003.1010(a); 45 CFR 102.3)

- Beware “gainsharing” programs

CIVIL MONETARY PENALTIES LAW

- Excluded person cannot order or prescribe items payable by federal healthcare program.
- Cannot submit claim for item ordered or furnished by excluded person.
- Cannot hire or contract with excluded entity to provide items payable by federal programs.

(42 USC 1320a-7a(a)(8); 42 CFR 1003.200(a)(3), (b)(3)-(6))

- Penalties
 - \$20,866* per item or service ordered.
 - 3x amount claimed.
 - Repayment of amounts paid.
 - Exclusion from Medicare and Medicaid

(42 USC 1320a-7a(a)(8); 42 CFR 1003.210; 45 CFR 102.3; OIG Bulletin, Effect of Exclusion, available at <https://oig.hhs.gov/exclusions/files/sab-05092013.pdf>)

REPORT FRAUD

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501(C)(3) TAX EXEMPT STATUS

- Organization's net earnings shall not inure in whole or part to the benefit of private individuals.
- Penalties
 - Loss of tax exempt status
 - Intermediate sanctions if paid excessive economic benefits*
 - Return of the excess benefit.
 - 25% of the excess benefit.
 - 200% of the excess benefit if not corrected within time.

*"Excess benefit occurs when the value of the benefit provided by the organization exceeds the value of the services received. Fair market value is the benchmark used to determine value."

(IRS Health Care Provider Reference Guide at 6 (2004))

ADDITIONAL RESOURCES

[HTTPS://WWW.HOLLANDHART.COM/HEALTHCARE-SERVICES](https://www.hollandhart.com/healthcare-services)

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OVERVIEW

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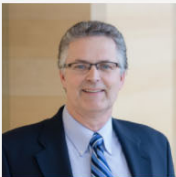
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In recent years, healthcare has experienced dramatic change, extraordinary competition, and increasingly complex regulation.

Our experienced attorneys help clients navigate through and respond to these challenges. By remaining on the forefront of healthcare law, we are able to provide coordinated services to meet our clients' business, transactional, litigation, compliance and regulatory needs.

Clients We Serve

- Hospitals
- Individual medical providers
- Medical groups
- Managed care organizations (MCOs)
- Third-party administrators (TPAs)
- Health information exchanges (HIEs)
- Practice managers and administrators
- Insurance providers
- Independent practice associations (IPAs)
- Owners of healthcare assets
- Imaging centers
- Ambulatory surgery centers
- Medical device and life science companies
- Rehabilitation centers
- Extended and eldercare facilities

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8:26 PM

QUESTIONS?

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