

COMPLIANCE-DRIVEN CONTRACT MANAGEMENT SOLUTIONS

Contract management plays an important role in the day-to-day operations of any hospital or health system. With increased governmental scrutiny on hospital and physician arrangements, the need to ensure and track compliance across a health system's portfolio of contracts is vital. An effective contract management program helps a health system to implement appropriate controls to encourage compliance with internal policies as well as the external laws and regulations governing the health system's operations. A contract management system can provide clear processes for hospital and health system staff and representatives to follow to safeguard its contractual arrangements and ease the administrative burden of monitoring a comprehensive contract portfolio that could potentially include thousands of arrangements.

POTENTIAL PITFALLS

The Stark Law prohibits a physician (or a physician's immediate family member) with a financial relationship to an entity from making referrals to that entity for designated health services, *unless an exception applies*.¹ Sanctions under the Stark Law include severe financial penalties and potential exclusion from Medicare and Medicaid. Arrangements implicating the Stark Law must meet an exception, the elements of which need to be clearly set forth in the agreement documenting such an arrangement. A reliable and efficient contract management program allows a hospital or health system to easily monitor its agreements and track compliance with certain elements of the applicable Stark Law exception. For example, an adequate tracking system should include the controls and approval processes to ensure the agreement is current, set out in writing, signed by all parties and specifically describes the goods and services provided. Prior to services being rendered and payments being made, such a program not only could alert administrators when a contract does not exist, or is about to expire, but also would allow the hospital or health system to confirm an accurate fair market value analysis was performed, track payments made to and from physicians, and monitor the commercial reasonableness necessary to comply with applicable exceptions by ensuring there are no duplicate or overlapping arrangements for the same services.

The Anti-Kickback Statute prohibits knowingly and willfully soliciting, receiving, offering or paying remuneration, directly or indirectly, overtly or covertly, in cash or in kind, in exchange for or to induce the referral of any item or service for which payment may be made in whole or in part under Medicare, Medicaid or other government health programs.² In order to avoid violation of the Anti-Kickback Statute, arrangements cannot be pursued with impermissible intent to induce referrals. Certain agreements present heightened risk of an Anti-Kickback Statute violation and must be scrutinized closely to determine if the arrangement meets an applicable safe harbor protecting the agreement from investigation or prosecution. Similar to the Stark Law exceptions, a contract management program that monitors and maintains the documentation and required approvals of an agreement under the Anti-Kickback Statute can help a provider maintain compliance with these requirements across an expansive portfolio of contracts. Documentation can confirm the legitimate business purpose by setting forth a hospital's need and utilization plan for the item or service and requiring approvals from the various departments to demonstrate the commercial reasonableness of such an arrangement.

SOLUTIONS

Ntracts, Inc., jointly owned by Hall Render, offers contract management software designed to help hospitals and health systems efficiently and accurately manage their contracting portfolio. The Ntracts software allows clients to customize contract management practices to implement proper controls that include repeatable processes and approval requirements that a health system can point to in ensuring its compliance with the applicable regulations, such as the Stark Law and Anti-Kickback Statute. Utilizing a program like Ntracts can be an important component of a provider's compliance program that demonstrates, both to internal governing bodies and external regulators, the organization's commitment to compliant physician contracting controls.

If you have any questions regarding contract management or the Ntracts, Inc. software and service offerings, please contact:

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¹ 42 U.S.C. § 1395nn

² 42 U.S.C. § 1320a-7b(b)

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