

7 Stark, Anti-Kickback and False Claims Concepts for Senior Leadership

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1. Key Federal Statutes

- A. Stark
- B. Anti Kickback
- C. Internal Revenue Code
- D. False Claims Act

2. Bona Fide Employment

- A. Broad Exceptions and Safe Harbors
- B. Fair Market Value
- C. Not related to referrals

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3. Fair Market Value

- A. Can't account for technical volume
- B. Can account for personal productivity
- C. Surveys to support
- D. Special Report for unusual situations – i.e., the 36,000 RVUs a year orthopedic surgeon, the 28,000 RVUs a year cardiologist

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4. The Tuomey Case

- A. Required to perform cases at Tuomey
- B. Base Salaries tied to net cash collections for outpatient procedures
- C. Productivity bonuses equal to 80% of collections plus a productivity bonus
- D. Qui tam- \$11,000 per claim plus triple damages, every bill is a claim
- E. \$237 million dollar verdict- this is a key reason why systems settle these cases

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4. The Tuomey Case

F. 2 or 3 law firms, 2 or 3 valuation firms

G. A CEO who is a good person

H. Takeaways

- i. When you need 6 professional services firms to support an idea, run fast
- ii. Some types of employment very different than traditional employment relationships
- iii. Sheer magnitude of damages often causes settlement
- iv. Systems should view as a reminder to again do an audit of all physician relationships
- v. This is another verdict that will likely lead to a hospital change of control

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5. Rebuttable Presumption – IRC 4958

- A. The holy grail is the rebuttable presumption
- B. Approved by an authorized body with people that have no conflict
- C. supported by appropriate data
- D. properly documented by authorized body

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6. The Waterloo/Covenant Case

- A. Alleged unreasonable compensation
- B. 2 of 5 paid above \$2mm a year
- C. Hospital settled for \$4.5 million

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7. Compliance Measures

- A. A ton of situations evolve out of technical violations.
Consistent systematic efforts to make sure all in writing and simply meet a Stark exception
- B. Documentation as to FMV, a file to support FMV
- C. Clear documentation and rationale as to why needed.
Commercial reasonableness
- D. A record as to core compliance with stark exception and kickback safe harbor
- E. Consider reasonable compensation caps
- F. A proactive compliance based culture

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F. The nightmare that is self reporting

G. Beware of new interesting creative ideas

- i. The health alliance of greater Cincinnati pays \$108mm. Cardiology testing unit.
- ii. The \$22mm St Josephs Medical Center cardiology driven case, PSAs.

Questions or Comments?

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