



PHYSICIAN PRACTICE TRANSACTIONS LEGAL CONCERNS

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Overview

- Types of Physician Practices
- Regulatory Issues Affecting Physicians
- Buying Into a Physician Practice
- Sale and Purchase of a Medical Practice
- Due Diligence and Related Activities
- Purchase Agreement
- Questions and Answers



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Types of Physician Practices

- Individual Physician Practices
- Group Practices
- Hospital or Other Facilities
- Managed Care Organizations
- Integrated Delivery Systems
- Physician Hospital Organizations



Regulatory Issues Affecting Physicians

- Civil Monetary Penalties Law
- Antitrust Laws
- Anti-Kickback Statute
- Stark Law
- HIPAA
- State Laws
 - Licensure Laws
 - Fee-Splitting Statutes
 - Corporate Practice of Medicine Restrictions



Anti-Kickback Statute

(42 U.S.C. § 1320a-7b(b) and implementing regulations at 42 C.F.R. § 1001.952)

- Makes it illegal for any person to knowingly and willfully pay or receive any compensation in return for:
 - a referral for any item or services paid for by a federal health care program; or
 - purchasing, leasing or ordering any good, facility, service or item paid for by a federal health care program.



Safe Harbors

- Investment interests;
- Rental of space or equipment;
- Personal services and management contracts;
- Sale of practice;
- Referral services;
- Warranties;
- Discounts;
- Amounts paid by employers to employees with bona fide employment relationships;
- Group purchasing organizations;
- Waiver of beneficiary coinsurance and deductible amounts;
- Increased coverage, reduced cost-sharing amounts, or reduced premium amounts offered by health plans;
- Price reductions offered by health plans;
- Practitioner recruitment;
- Obstetrical malpractice insurance subsidies;
- Cooperative hospital service organizations;
- Ambulatory surgical centers;
- Referral arrangements for specialty services;
- Price reductions offered to eligible managed care organizations; and
- Ambulance replenishing.



The Stark Law

Stark Law prohibits a physician from making referrals for “designated health services” to entities with which the physician or immediate family member has a direct or indirect financial relationship.

- Only applies to Medicare Designated Health Services (or DHS).
- **Intent is not a factor—strict liability.**



Stark Law Exceptions

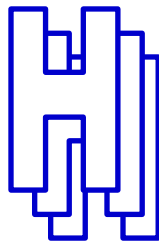
- Rental of office space or equipment;
- *Bona fide* employment relationships;
- Personal service arrangements;
- Physician recruitment;
- Isolated transactions;
- Whole hospital ownership;
- Group practice in-office ancillary services;
- Payments or charitable donations by a physician;
- Non-monetary compensation up to \$300;
- Fair market value compensation;
- Medical staff incidental benefits;
- Risk sharing arrangements;
- Compliance training;
- Indirect compensation arrangements;
- Referral services;
- Obstetrical malpractice insurance subsidies;
- Professional courtesies;
- Retention payments in underserved areas;
- Community-wide health information systems;
- Electronic prescribing items and services; and
- Electronic health records items and services.



HIPAA and HITECH Act

HIPAA = Health Insurance Portability
and Accountability Act of 1996

Who is covered?



Covered entities (The Three Hs):
Health care clearing houses
Health care providers
Health plans

Business Associates

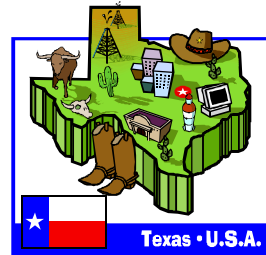
Who are Business Associates?

- Accountants
- Consultants
- Insurance Brokers
- Lawyers
- Management, Billing and Staffing Companies
- Medical Directors
- Third Party Administrators
- Vendors
- Wellness Companies



State Laws

- Requirements Vary by State
- State Licensure Law
- Fee-Splitting Statutes
- Corporate Practice of Medicine



Buying Into a Physician Practice

- Evaluate:
 - Type of Entity
 - Governance Documents
 - Practice Agreements
 - Financial Books and Records



Sale and Purchase of a Medical Practice

- Confidentiality Agreement
- Letter of Intent
- Due Diligence
- Purchase Agreement



Due Diligence and Related Activities

- Structure of Transaction
- Tax Treatment
- Liability
- Other Considerations



Purchase Agreement

- Licenses and Permits
- Purchase Price
- Representations and Warranties
- Indemnification
- Closing Conditions



Questions and Answers

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