

Part III: Marketing Hospice Services

Frequently Asked Questions about the Use of Consulting Physicians/Medical Directors

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There is increasing recognition among hospices that relationships with consulting physicians/medical directors are extremely useful. Many managers already understand that, if consulting physicians/medical directors also make referrals to hospices, the requirements of the anti-kickback statute and so-called “safe harbors” must be met.

Among other requirements, the anti-kickback statute requires hospices to sign written agreements with physicians who provide consulting physician/medical director services and make referrals to the same hospices.

The basic requirements that must be met are as follows:

- Written agreements are entered into with physicians, are signed by providers and physicians, and specify the services covered by the arrangement.
- The arrangement must cover all of the services to be furnished by referring physicians to providers.
- Aggregate services provided do not exceed those that are reasonable and necessary for the legitimate business purposes of providers.
- The term of each arrangement is for at least one (1) year.
- Compensation paid over the term of the agreement is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties.
- The services to be furnished under each arrangement do not involve the counseling or promotion of a business arrangement, or other activity that violates any State or Federal law.

Providers frequently have the following questions about these requirements:

Can I use a “sample agreement?”

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No, providers who use “sample agreements” clearly risk non-compliance, with potentially serious consequences. First, although the federal requirements described above apply to all providers, many states have implemented statutes and/or regulations that impose additional requirements on providers and physicians who establish these types of relationships. Because the laws vary from state to state, “sample agreements” will not reflect these requirements and are likely to be non-compliant.

In addition, the services to be provided by physicians to agencies should vary from physician to physician and must be carefully described so that they comply with the above requirements. “Sample agreements” cannot provide the careful language that is required.

Can I pay physicians a flat monthly amount?

Physicians frequently tell agencies that they want, for example, \$3,000.00 per month.

The best practice is to pay per hour at rates consistent with fair market value in the geographic area in which the services are provided. This practice will alleviate any questions about whether payments were made for services that were not provided.

Providers must also be careful that they do not “back into” amounts paid to physicians. If, for example, physicians demand \$3,000.00 per month, hospices should not respond by saying that they will make sure physicians get enough hours at an established hourly rate to at least equal this amount. Instead, the amounts paid to physicians are likely to vary considerably each month if hospices are in compliance with the above requirements, including payment for services only if they are really needed by hospices.

What documentation do I need from physicians each month in order to pay them for their services?

Physicians must submit invoices that include the date on which they provided services, a description of the services provided, and the amount of time spent on each activity. Hospices must review this documentation prior to making payments to physicians in order to help ensure compliance with applicable requirements. Any entries that just do not make sense must be revised before payments are made.

If, for example, physicians are reviewing patients’ medical records, it is not unusual to see invoices that indicate that the same exact amount of time was spent on each chart. If enforcers see entries like these, their likely response is, appropriately, “Impossible!” It is simply impossible that physicians spent exactly the same amount of time on each chart. The documentation is, therefore, clearly suspect.

Instead, physicians must document the actual amount of time they spend on each activity. If “nailing down” this issue is problematic, hospices may ask physicians to document the time they actually began each activity and the time they completed each activity.

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There are many legitimate reasons for hospices to use the services of consulting physicians/medical directors who also make referrals to them. Compliance with all applicable requirements is absolutely essential.