

Sorensen, HET Presentation
Hypothetical #2 – Directed Referrals

New Deal Health has engaged a community physician, Dr. Roosevelt, as the medical director for its skilled nursing facility, Olds House, which is affiliated with one of the hospitals in the system, Northern Governors Hospital. Dr. Roosevelt is a gerontologist with a robust practice who sees patients in the community at his private medical practice's offices as well as at Olds House and at local hospitals, including Northern Governors. There are four other nearby hospitals where Dr. Roosevelt sees patients. These hospitals are all located within a one-hour drive of Olds House.

As the SNF medical director at Olds House, Dr. Roosevelt's responsibilities include those that are outlined in the CMS SNF Requirement, specifically 42 C.F.R. § 484.70(h) ("The facility must designate a physician to serve as medical director. . . .The medical director is responsible for (i) Implementation of resident care policies; and (ii) The coordination of medical care in the facility.")

Dr. Roosevelt is paid on an hourly basis for services he provides as medical director, subject to certain maximum monthly caps as set forth in his medical director agreement. Dr. Roosevelt is required to maintain a log of his services and submit it to Olds House on a monthly basis to invoice Olds House for his services. Olds House issues a 1099 to Dr. Roosevelt each year for his medical director services.

As a practical matter, Dr. Roosevelt also serves as the attending physician for a majority of the SNF's residents; there are not many physicians in the isolated, mountainous local community near Tahawus, NY, where the SNF is located who are willing to see patients in the SNF. However, each resident may choose his or her own attending physician and residents are not forced to choose Dr. Roosevelt.

New Deal Health has directed Olds House to include a provision in Dr. Roosevelt's medical director agreement requiring Dr. Roosevelt to direct referrals of patients in need of SNF care to Olds House, subject to the following exceptions: (1) where a patient expresses a preference for a different SNF; (2) where a patient's insurer determines which SNF the patient should enter; (3) if Dr. Roosevelt believes referring the patient to Olds House is not in the patient's best medical interests.

Questions:

1. Does this referral requirement comply with the Stark Law?
2. Does this referral requirement comply with the AKS?
3. What is your assessment of the level of risk under the AKS?
4. What compliance safeguards should New Deal and/or Olds House implement to reduce that risk?