

# Physician Contracting Oversight & Monitoring

Claudia E. Mantia

Director, Corporate Compliance & Ethics

Mount Sinai Health System

# Disclaimer

The information provided in this presentation is based on personal experience and such is provided for informational purposes only, and should not be construed as legal advice nor guidance.

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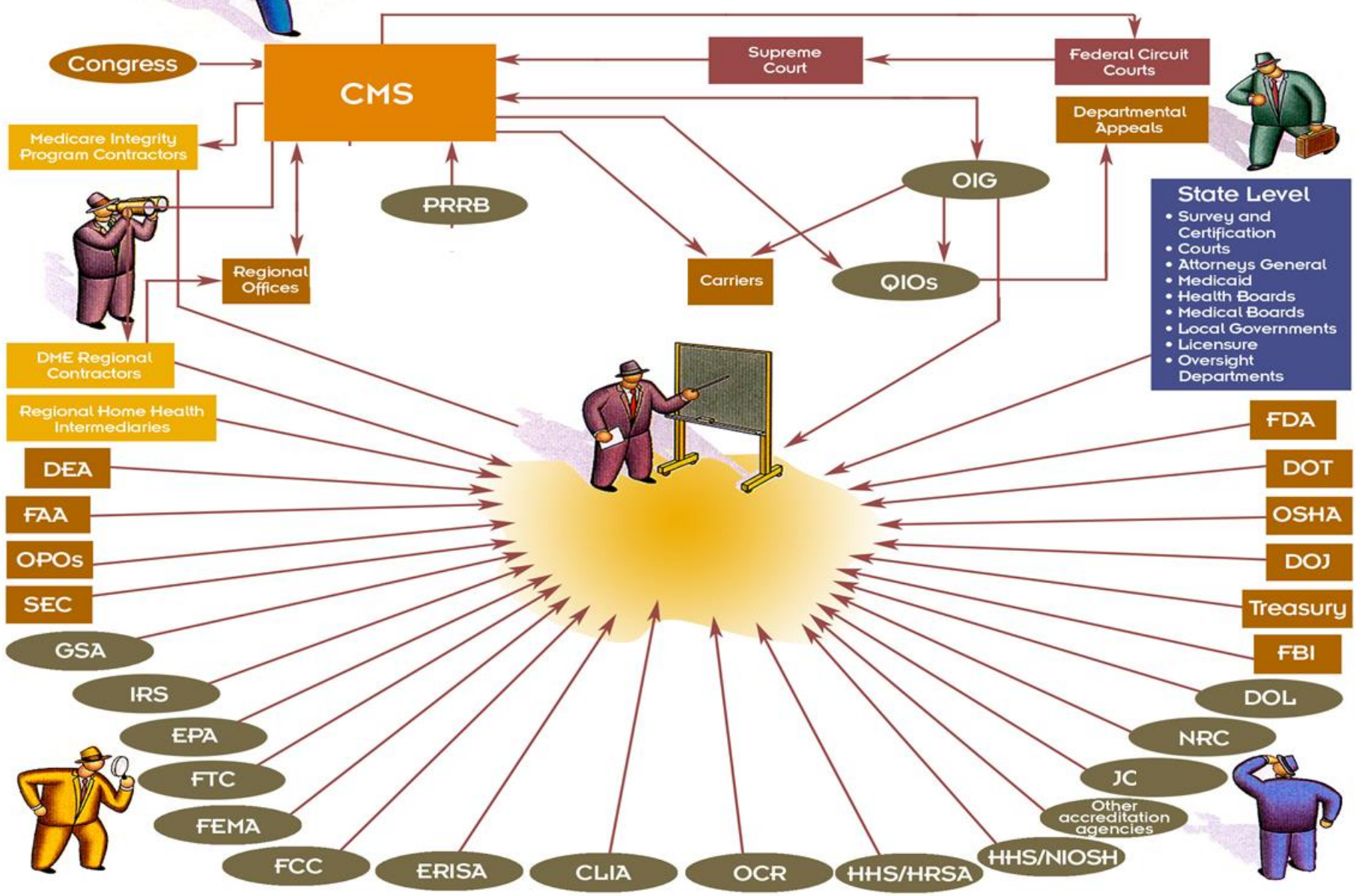
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# Why a Compliance Program???

# The Importance of a Compliance Program

- Compliance Programs are mandated by both Federal and State Law (Office of the Inspector General (OIG) and NYS Office of the Medicaid Inspector General (OMIG))
- Promotes a culture of ethical behavior and commitment to compliance with the law
- Aids in preventing and detecting wrong-doing
- Provides “safe” mechanisms for reporting and seeking help in getting it right the first time
- Raises awareness of organizations expectations

# Oversight of the Health Care Industry



# Introduction to Physician Contracting

## HOSPITAL & PHYSICIAN RELATIONSHIPS



**MUST MEET REGULATORY STANDARDS TO ENSURE...**

**“COMPLIANCE”**



# Why are hospital/physician financial arrangements important?

- ✓ Hospitals enter into a variety of arrangements with physicians to address community needs, to expand services, or to improve physician integration, and lastly, to mitigate financial risk.

Examples of such arrangements are:

- Medical Directorships
- Administrative Arrangements
- Research
- Teaching
- Clinical
- Equipment, space and staffing leases
- On-Call coverage arrangements
- Professional Services Agreements
- Physician recruitment arrangements
- Practice management arrangements



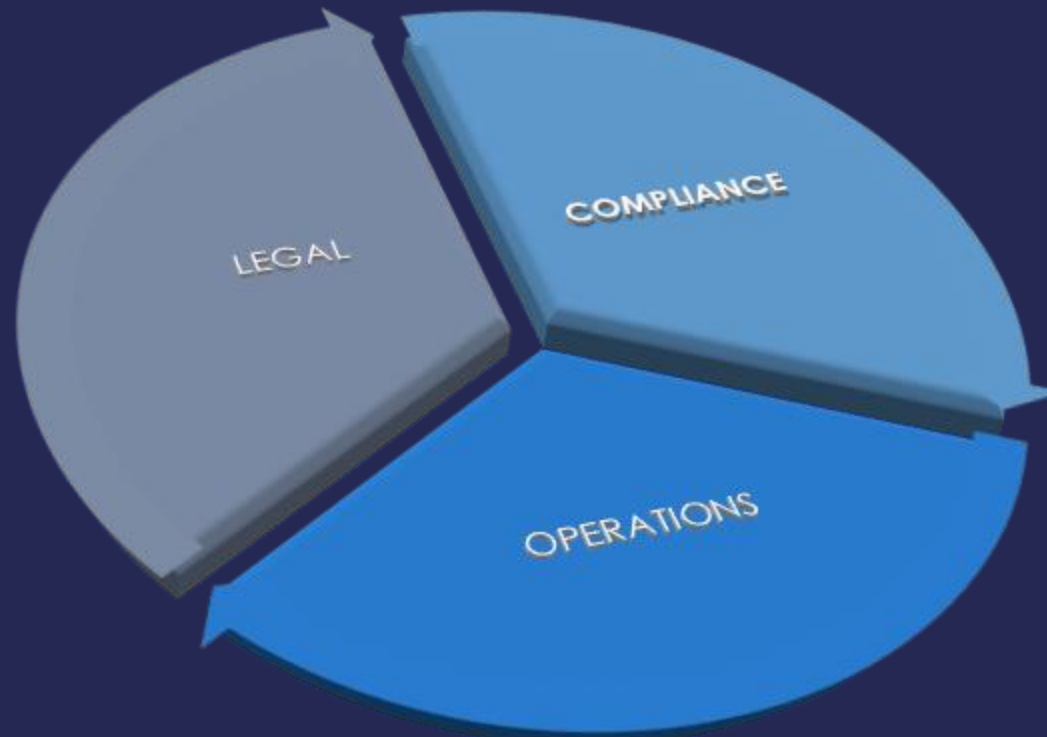
# Physician Contracting Oversight & Monitoring



Develop a formal process for monitoring physician financial arrangements by:

- Evaluating the arrangements at a Committee level where multiple operational areas are involved
- Place responsibility of oversight at the local level (establish a point of contact (POC))
- Educate the physician on what expectations are
- Develop a Monitoring Plan with your POC
- Audit to ensure adherence

# AN IMPORTANT PARTNERSHIP



# Regulatory Guidance

*"If you haven't reviewed your physician contracts lately, it's time you did. The Centers for Medicare and Medicaid Services (CMS) and the Office of the Inspector General (OIG) are enforcing Stark and federal anti-kickback laws with renewed vigor, and hospitals need to be wary of any and all agreements made with physicians past, present, and future."*

# Common Violations

The most common violations organizations are discovering and what executives should look for as they review for Stark compliance:

- Expired Healthcare Contracts
- Financial relationships where no contract ever existed
- Parties modify the financial terms without putting the modification in writing
- Agreement incorrectly describes the service
- Hospital gives a gift or benefit to a doctor that exceeds Stark's \$429 minimum exception.

Prompt self-disclosure can mean the difference between a three-year certification of compliance agreement or a strict five-year corporate integrity agreement

# Why are hospital/physician financial arrangements important?

## THE NOT-SO-GOOD NEWS:

- ☒ Certain types of hospital/physician/professional arrangements are subject to heightened regulatory scrutiny.

Types of laws and regulations that govern these relationships:

- Stark Law
- Anti-kickback Statute
- False Claims Act

**Additional information (Final Rule – Revisions to Safe Harbors under AKS and CMP Rules Regarding Beneficiary Inducements)**

<https://oig.hhs.gov/reports-and-publications/federal-register-notices/factsheet-rule-beneficiary-inducements.pdf>

# Stark Law

Permits physician referrals when you have a financial relationship with the entity that falls within an allowable exception





## Stark Law (Physician Self-Referral Law)

A physician cannot refer patients for designated health services (DHS) to entities in which the physician has a financial stake, either directly or through an immediate family member, *UNLESS* the arrangement falls into certain permitted exceptions. A few examples of general exceptions are: **office space and equipment rentals, as well as, professional service arrangements (PSAs).**



# Consequences of violating the Physician Self-Referral Statute:

- Payment denial
- Monetary penalties
- Exclusion

# The Anti-Kickback Statute



Prohibits asking for or receiving anything of value in exchange for referrals of Federal health care program business

# Healthcare Anti-Kickback Statute:

- Physicians cannot intentionally solicit or receive remuneration of any type
- Hospitals cannot offer or pay remuneration of any type to induce the referral of patients for designated health services

Note: if a person/entity satisfies the requirements of a safe harbor provision, otherwise suspect practices are not subject to prosecution.

Some examples include: space and equipment rental agreements, personal services & management contracts

# Anti-Kickback Statute

Prohibited kickbacks include:

- Cash for referrals
- Free rent for medical offices
- Excessive compensation for medical directorships



# Kickbacks can lead to:

- Overutilization
- Increased costs
- Corruption of medical decision making
- Patient steering
- Unfair competition



# False Claims Act

A person wearing a grey suit jacket is shown from the side, with their right hand tucked behind their back. The background is white, and the person's hand is the central focus of the image.

**Prohibits the  
submission of false  
or fraudulent claims  
to the Government**

# Federal False Claims Act Explained

The Federal False Claims Act makes it unlawful for any person to, among other things, knowingly:

- Present, or cause to be presented, a false or fraudulent claim for payment or approval
- Conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to the government

## Recent legislative changes have:

- Imposed an obligation on providers to report and return known overpayments to the government
- Made violations of the Anti-Kickback Statute punishable under the False Claim Act



# Violations & Penalties

STARK LAW	ANTI-KICKBACK STATUTE	FEDERAL FALSE CLAIMS ACT
<p>Civil penalties include:</p> <ul style="list-style-type: none"><li>• Loss of eligibility in Medicare/Medicaid programs (Exclusion)</li><li>• Reimbursement of revenues to federal government</li><li>• \$15,000 per claim</li><li>• \$100,000 per non-compliant arrangement</li></ul>	<p>Penalties include:</p> <ul style="list-style-type: none"><li>• Fines (\$25,000 per infraction)</li><li>• Loss of eligibility</li><li>• Prison time</li></ul>	<p>Civil penalties include:</p> <ul style="list-style-type: none"><li>• Fines (\$5,000 to \$11,000 per claim)</li><li>• 3x amount of damages sustained by government</li><li>• Loss of eligibility in Medicare/Medicaid programs (Exclusion)</li></ul>

# The Monitoring Process



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
**OFFICE OF INSPECTOR GENERAL**  
WASHINGTON, DC 20201



**Fraud Alert: Physician Compensation Arrangements  
May Result in Significant Liability**

June 9, 2015

Physicians who enter into compensation arrangements such as medical directorships must ensure that those arrangements reflect fair market value for bona fide services the physicians actually provide. Although many compensation arrangements are legitimate, a compensation arrangement may violate the anti-kickback statute if even one purpose of the arrangement is to benefit a physician for his or her past or future referrals of Federal health care program patients. Physicians to carefully consider the terms and conditions of medical arrangements before entering into them.

who entered into questionable compensation paid to

# The Monitoring Process

*Our responsibility is to ensure that Professional/Physician Financial Arrangements are:*

- ✓ Identified
- ✓ Documented
- ✓ Categorized
- ✓ Justified



# Monitoring Process



1. Ensure compliance with contractual terms

*Examples:*

- **For Lease Arrangements:**

- ⇒ are we receiving exclusive use of the space we contracted for?
- ⇒ are we getting the related services and personnel we contracted for?
- ⇒ is the arrangement commercially reasonable?

- **For Contracted Professional / Physician Arrangements:**

- ⇒ is the professional/physician performing his/her contracted duties?
- ⇒ is the professional/physician allocating the appropriate time per their contract?
- ⇒ *does the documentation reflect the services being provided?*

2. Document and track professional/physician activity for internal and external audits
3. Track and evaluate contract performance for PRRC (Physician Relationship Review Committee)
4. Ensure that the arrangement does not fall out of Fair Market Value (FMV) compliance
5. Monitor Quality of Care

# How Can We Monitor Professional/Physician Financial Arrangements?

## *A few Ideas (based on experience):*

- Verifying that required documentation and oversight is provided for the proper vetting of arrangements
- Creating and maintaining a comprehensive database for arrangements
- Working with individual departments to document and track physician activity
- Training and educating physicians, business owners, and staff
- Conducting site visits, interviews and spot checks
- Conducting billing activity reviews
- Comparing activity and payments to contracts
- Identifying contracts requiring updates
- Following up on issues and concerns

# The Role of the Physician...

1. *Know and understand the terms of his/her contracts (scope of duties, practice hours, etc.)*
2. *Stick to the terms of their contract.*
3. ***Make sure they know they are meeting their contractual obligations, i.e., make sure their activities can be easily verified and documented.***
4. *If they have any questions or concerns, encourage them to speak with their (POC).*



# Documenting a physician's Role

- **Clinical Roles** – time is evidenced by billing reports regardless of the type of arrangement
- **Administrative, Teaching & Research Roles** - time will be evidenced by the completion of a **Time Log / Time Study** along with supporting documentation that supports the work that you have been tasked with.





# Wynn pleads guilty

## Embezzled CAT money to be repaid



By Neil A. Rahn  
FEB 11 1996

The former state health commissioner has pleaded guilty to embezzling \$1.5 million from the state's Medicaid program. The state attorney general announced the guilty plea on Monday.



### Big Fugitive: Eric Ewington

- On October 7, 2012, an arrest warrant was issued for Ewington, M.D., for violating Medicaid rules. Investigators believe Ewington falsified and Medicaid rules that SDC 000 be services performed, and he engaged an unlicensed physician engaged in similar conduct.
- According to the County Complaint, Ewington was a physician practicing in the State of Michigan, and owner of a private medical center, Ewington Medical (EMC). Ewington allegedly employed an unlicensed health care provider at EMC when he was not there, and Medicaid as if he performed the services. The owner of EMC, Ewington spoke about at his time that another physician at another medical facility.
- The unlicensed physician treated several patients, which resulted in charges of first degree fraud, health care fraud, and health care services being held prior to trial.
- Ewington fled the United States for Mexico was the State Agents. He remains a fugitive charge.

REPORT



# In the news...




**False Claims Act law enforcement now returns \$20 back for every \$1 invested in health care related cases.**

Source: Fighting Medicare & Medicaid Fraud: The Return on Investment from False Claims Act Partnerships, by Jack A. Meyer, Managing Principal, Health Management Associates, Published by Taxpayers Against Fraud Education Fund, October 2013.

# And the stories go on...

Organization	Fine	Reason
CONDELL MEDICAL CENTER	\$36 MILLION SETTLEMENT	LEASES BELOW FMV / NO WRITTEN ARRANGEMENTS WITH DOCTORS
DETROIT MEDICAL CENTER	\$30 MILLION SETTLEMENT	LEASES BELOW FMV / NO WRITTEN LEASE
BRISTOL HOSPITAL AND BRISTOL GASTROENTEROLGY ASSOCIATES, PC	\$157,830 SETTLEMENT	STARK VIOLATION / OCCUPYING SPACE WITHOUT A WRITTEN LEASE AND RENT NOT COLLECTED
UNITED GENERAL HOSPITAL	\$74,067 SETTLEMENT	STARK & ANTI-KICKBACK VIOLATIONS– UGH PAID REMUNERATION TO A PHYSICIAN IN THE FORM OF EXCESSIVE COMPENSATION FOR SERVICES PERFORMED AT ITS FACILITY

**QUESTIONS?**



# Thank you!!!!

## Contact Information

Claudia E. Mantia

[claudia.mantia@mountsinai.org](mailto:claudia.mantia@mountsinai.org)

(917)842-9947