

Part B Insider (Multispecialty) Coding Alert

Fraud & Abuse: Income Guarantees For New Recruits Only Guarantee Pain

Wave goodbye to non-compete clauses for new docs

If your practice partnered with a hospital to recruit a new physician to come work for you, then the new Stark II self-referral regulations could lead to nightmares.

The "Phase 2" Stark II regs, which took effect July 26, forbid some common practices when hospitals and physicians collaborate on recruitment. Many practices and hospitals have signed agreements with recruited physicians in which the recruiter guarantees the physician a certain salary for the first year, and then the hospital guarantees that it will cover the difference between the new physician's actual earnings and that guaranteed salary. In return, the new physician agrees to stay in the geographic area for an extra couple of years.

The new regulations "really changed the landscape of the kind of recruitment arrangements" hospitals and physicians can enter into, says attorney **Bob Ramsey** with **Buchanan Ingersoll** in Philadelphia. "Income guarantees" are still acceptable, as long as you follow the new rules. In particular, your practice can no longer:

- bill the hospital for expenses unrelated to the new physician's recruitment, such as fixed overhead;
- include a clause in the new physician's contract that forbids him or her from competing with your practice for a set period of time;
- receive payment directly from the hospital to supplement the new physician's income; or
- guarantee a physician's income if he/she moved less than 25 miles to join your practice.

If you thought physician recruitment and income guarantees were an arcane subject area that nobody in law enforcement cared about, the case of **Tenet Healthcare** should give you pause. Santa Barbara, CA-based Tenet appears to be undergoing a full-fledged investigation of its physician recruitment practices.

In the latest episode, Tenet disclosed that federal prosecutors were seeking information about its financial arrangements with St. Louis, MO physicians. Tenet has said officials are scrutinizing its relocation deals in other parts of the country, and the company's Alvarado Medical Center faces criminal kickback charges over the arrangements, according to the Wall Street Journal.

"We are sensitive to the concerns that regulatory agencies have with physician relocation arrangements," insisted Tenet General Counsel **Peter Urbanowicz** in a release.