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Top 10 Counseling Tips for Minimizing Stark Law Exposure

1. Implement safeguards to ensure that no payments are made to physicians until there is a record of a fully executed, Stark-compliant contract and that all payment amounts match the contract.
   - Even one-time payments for speaker fees and the like need to be backed by a writing, signed by the parties.
   - Implement policies and internal controls to ensure against the use of leased space or equipment absent a fully executed, Stark-compliant lease. ***This is particularly important for timeshare leases.***
   - Prohibit the distribution of keys to leased office space or the delivery of leased equipment until policy requirements are met.
2. Document FMV rationale for all contractual arrangements.
   - Don't blindly rely on third-party valuations – conduct "critical eye" review to ensure that projected DHS revenue streams from physician do not figure into valuation and that reasonable benchmarks are used.
   - Specifically request experts to stipulate that compensation is commercially reasonable and does not take into account referrals.
3. Monitor losses on physician operations and document legitimate (non-DHS related) rationale for subsidies to ensure commercial reasonableness.
   - Don't refer to losses as subsidies.
4. Build in automatic escalators or periodic FMV reevaluations under contractual arrangements at commercially reasonable intervals.
   - While auto renewal clauses are advisable, they make periodic FMV resets particularly important.
5. Consider adoption of a physician compensation plan for employed physicians with a process for validating FMV compensation, including committee and/or outside review of all compensation prior to payment that would push physicians over predetermined thresholds and documentation of the rationale for such payment.
   - Include a mechanism for validating that the compensation methodology does not take into account the volume or value of DHS referrals.
6. Carefully structure physician practice subsidiaries to ensure that they satisfy each and every element of the Stark Law "group practice" definition. In particular:
   - Ensure that the Board maintains centralized governance over budgets, compensation and salaries. ***This is particularly important in "pod"-based practices.***
   - Make sure that all compensation, expense allocation and profit sharing methodologies are established prospectively (before the period in which DHS revenues are earned and expenses associated with those revenues are incurred). ***No retrospective changes/adjustments.***
   - Carefully evaluate profit splits to ensure compliance with "special rules."

7. If the group practice has "pods," consider the following safeguards:
   - Rigorous maintenance of cost centers to ensure that direct expenses of each pod are properly tracked and taken into account in profit calculations.
   - Appropriate allocations of general overhead costs to avoid overstatement of profits.
   - Avoidance of across-the-board assumptions regarding contractual allowances, bad debt ratios and collection ratios that might distort actual net income.
   - Internal controls to ensure that all "pods" always have five or more physicians.
8. Consider adoption of a comprehensive policy on Non-Monetary Compensation with appropriate tracking process if you do not already have one in place.
   - Build in letter agreements to cover meals and travel provided in connection with committee services, recruitment dinners and the like.
9. Educate management teams on Stark Law pitfalls and untenable "math" of violations.
   - Focus on risks of ROI calculations based on additional facility revenues expected from physician relationships.
   - Arm teams with knowledge of what they ***can*** do – not just what they ***can't*** do.
10. Conduct Stark Law audits to identify any non-compliant physician relationships and self-report any identified violations through the Self-Referral Disclosure Protocol or other appropriate channel.
    - Consider comprehensive compliance program effectiveness reviews to ensure that appropriate policies and internal controls are in place to promote compliance and minimize institutional risk.

If you have any questions, please contact any of the following Katten attorneys.

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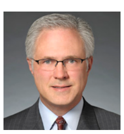

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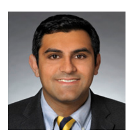

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