

**HealthLeaders EXTRA!****Steer Clear of Physician Recruiting Violations**

*By Jennifer Moody, for HealthLeaders News, July 21, 2003*

*SUMMARY (full story below)*

While the details of physician recruiting laws can be complex and best left to lawyers, HealthLeaders member Jennifer Moody says the basic principles don't have to be a mystery.

**FULL STORY**

The recent indictments in San Diego have dropped a big rock in the pond of physician recruiting. The ripples already are spreading throughout the physician-recruiting world, and hospital administrators, medical group managers, recruiters, and physicians are wondering how they will be affected.

The short answer is: not at all. At least, they shouldn't be.

The rules on physician recruiting have been clear for several years now, and the great majority of people involved in recruiting are making a good faith effort to abide by them.

Nevertheless, every time a high profile instance of alleged physician recruiting abuse takes place, it throws uncertainty over both those seeking doctors and doctors themselves. Hospitals and medical group managers question what incentives they are allowed to offer and how they can substantiate their need to recruit physicians to the community. Physicians who are the object of recruiting offers wonder what they can accept.

While the minutiae of physician recruiting laws can be complex and best left to lawyers, the basic principles don't have to be a mystery. It is pretty clear what the government does not want you to do and the procedures for steering clear of trouble generally are neither overly complicated nor onerous. There are some gray areas, but history shows that when it comes to violations of physician recruiting laws, the government targets flagrant offenders, not those who may unwittingly have violated one of the subtler requirements of the law.

**What Not To Do**

When it comes to physician recruiting, the government is concerned about several things. The Internal Revenue Service does not want individuals such as physicians to profit unduly through a financial relationship with a not-for-profit entity such as a hospital. The Department of Health and Human Services does not want hospitals to recruit physicians merely to capture patient referrals - particularly referrals of Medicare or Medicaid patients. The Stark Laws seek to limit financial relationships between physicians and hospitals.

Red flags are waved when hospitals offer physicians recruiting incentives that are conspicuously generous in light of what physicians in a particular specialty typically make. The IRS, for example, might question why a not-for-profit hospital would offer a \$230,000 income guarantee to a family practitioner, when most data would indicate that FPs generally earn between \$135,000 and \$165,000 a year. HHS might question why a hospital is recruiting a physician already practicing in the hospital's service area. Such "cross town recruiting" could be seen not as an effort to bring a needed service to the community, but rather as a scheme to buy a doctor's referrals. "Stealing" doctors from down the street, as this practice is called, also violates Stark. It's also a particularly bad idea to tie financial incentives offered to physicians to the volume of referrals they make to the hospital.

**Community Needs**

Given these restrictions, what types of incentives can hospitals offer to recruit physicians?

This is an area where there is ambiguity in the law.

The simple answer is that hospitals can offer physicians a sliding scale of incentives related to how urgently a new physician is needed in the community. If a facility is in a medically underserved area and has a documented need for a family practitioner, it can offer incentives including an income guarantee, signing bonus, malpractice insurance, and loan forgiveness. If the need is less obvious, the range of incentives may need to be scaled back.

A facility located in a large, complex medical service area will have a harder time confirming the need for a new physician than a facility in a small, medically underserved rural area typically would. Urban facilities, in particular, should take a scrupulous count of existing physicians in the area, review community demographics, analyze disease incidence, interview their medical staffs and take other steps to document the need for new medical services.

Just because there are many physicians in an area does not mean that a legitimate need for new physician services does not exist. Physician retirement or relocation, population shifts, changes in disease incidence and other factors can create a real need, but such factors must be documented.

### **Defensive Steps**

In addition to establishing a need for a new physician, hospitals can steer clear of physician-recruiting violations by taking the following steps:

- Employ the physician, which greatly obviates IRS concerns
- Keep financial incentives in line with current norms in a particular specialty and avoid excessive payments
- Specifically state in the recruiting contract that the physician is not required to refer to the hospital, nor will there be any payment based on referrals
- Do not seek to limit the physician's hospital privileges
- Recruit residents, or recruit physicians practicing outside the hospital's service area
- Make sure the recruiting agreement is in writing
- Require the new physician to see Medicare and Medicaid patients
- Limit benefits offered to the physician to three years
- Involve the hospital Board. Have the Board prepare a document confirming the hospital's commitment to adhere to recruiting laws and regulations.

Physicians also have obligations under the law. They should not accept financial incentives that are significantly higher than national norms and they should never agree to refer patients to a hospital in exchange for money or other rewards. They also should ask the hospital involved in the recruitment why there is a need for their services in the community.

### **Stay Poised**

Hospitals simply must recruit physicians from time to time to ensure that they are providing medical services needed in their communities. In order to do so, they must offer physicians incentives to relocate in their areas. The government understands this and makes allowances for it.

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