



Deferred Compensation Plans Involving Hospitals and Doctors

Leveraged Deferred Compensation can be very effective with highly compensated independent contractors and consultants; however, special care must be exercised if a hospital and a doctor utilize the strategy.

Medicare-Medicaid Anti-KickBack Rules: Doctors are often in a financial position to defer compensation, and Leveraged Deferred Compensation will be attractive to substantial numbers of them. Many hospitals have purchased or are attempting to purchase physician practices, and deferred compensation arrangements can be part of the compensation package. It is important that certain rules be observed when structuring such plans with doctors. The Medicare and Medicaid Anti-KickBack rules basically make it a crime to offer payments to induce referrals of Medicare or Medicaid referrals (42 USC Sec. 1320a-7b(b)).

The statute is violated even if only one purpose of the payment is to induce referrals (United States v. Greber, 760 F.2d 68 (3d Cir. 1985), cert. denied 474 U.S. 988 (1985)). This is a delicate area because doctors are frequently in a position to refer patients to a hospital, and the fraud and abuse rules are often raised by a party trying to discourage the transaction.

The fraud and abuse rules do not apply to an employee (42 CFR Sec. 1001.952(i)) as will be the case with Dr. Rand when she joins the staff of Bay Area Medical Center. Any payments to her as an employee should be exempt from the fraud and abuse statute cited above.

Stark II Rules: Another set of rules that can impact a compensation arrangement are referred to as the "Stark II" rules (named after the primary sponsor of the statute, retired Representative Pete Stark (D-CA)). Stark II basically prohibits a physician from referring certain types of Medicare or Medicaid to organizations in which the physician has a financial interest. Effective for referrals after December 31, 1994, the list of regulated services includes inpatient and outpatient hospital services (USC Sec. 1395nn). As under the Anti-KickBack rules discussed above, there are exceptions for bona-fide employment relationships (USC Sec. 1395nn(e)(2)).

If Dr. Rand is classified as an employee of the hospital, the Medicare-Medicaid Anti-KickBack Rules and the Stark II Rules should not present a problem for deferred compensation arrangements; however, any hospital and doctor considering a deferred compensation arrangement should do so only with the guidance and approval of tax and legal experts who are intimately familiar with both the Medicare-Medicaid Anti-KickBack Rules and the Stark II Rules.

Important Note: This information is for educational purposes only. In all cases, the approval of a client's legal and tax advisers must be secured regarding the implementation or modification of any planning technique as well as the applicability and consequences of new cases, rulings, or legislation upon existing or impending plans.

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