



Healthcare regulatory compliance

Enforcement of the Stark Law and Anti-Kickback Statute is on the rise.

“It only takes one problematic relationship with a referral source or one bad actor to undermine your organization’s reputation and financial health for years to come.”

– Jen Shimek, KPMG

Do you know your physician contracting risk?

- Has your organization reviewed its physician contracting processes in the past year in order to identify gaps in workflow or communication between relevant departments?
- Have you reviewed the financial arrangements you maintain with affiliated physicians and referral sources to help ensure they satisfy all regulatory demands and applicable safe harbors?
- Do you maintain a system of checks and balances to identify any “bad actors” that may maintain inappropriate relationships with referral sources?
- Do you adequately track nonmonetary compensation or gifts received by affiliated physicians and referral sources in order to satisfy applicable Stark Law exceptions and Anti-Kickback Statute safe harbors?

If you answered “no” to any of these questions, you may be exposing your organization to significant financial, reputational, and legal risks.

Are you confident in your business and physician relationships?

The risk of violating the Stark Law and Anti-Kickback Statute is rising, and the penalties have never been harsher. Not surprisingly, today’s healthcare providers are keenly focused on reviewing and monitoring their business and physician relationships.

The challenge has never been so complex.

When contracting with physicians, providers must ensure they remain compliant with a broad range of laws and regulations including the Stark Law, the Anti-Kickback Statute, the False Claims Act, and the Sunshine Act.

The Stark Law prohibits physicians from making referrals of certain designated health services that are paid for by Medicaid and Medicare to entities in which the physician (or family member) has a financial relationship. The Anti-Kickback Statute prohibits offering, paying, soliciting, or receiving anything of value in exchange for referrals. The regulators’ view of the prohibitions is very broad, and their investigations are increasing.

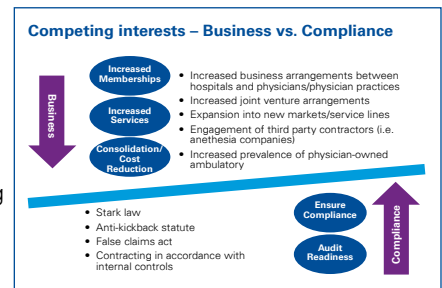
Maintaining compliance in this environment requires not only deep contracting knowhow, but also robust payment and reimbursement reviews using forensic accounting procedures.

At KPMG LLP (KPMG), we understand the complexity of these rules and have deep experience managing the combination of both contracting review and forensic accounting procedures that need to be undertaken to evaluate the physician reimbursement program efficacy. We also know how to manage and balance the often competing interests that arise between business drivers and compliance.

A heavy stick

Enhanced enforcement is evident in the substantial penalties have also that have been issued to providers found in violation of relevant laws. In fact, a total of \$2.5 billion was recovered from healthcare fraud and abuse in 2016 alone. Recent penalties include:¹

- A \$513 million penalty against a hospital system
- A \$646 million penalty against a medical device company
- A \$260 million penalty against a medical laboratory
- A \$2.7 million penalty against an ambulance provider



¹ Source: Office of Inspector General <https://oig.hhs.gov/fraud/enforcement/cmp/kickback.asp>

“Our experience working with healthcare providers—large and small—makes KPMG particularly well-placed to help identify processes and controls that you can put into place to help you manage your physician contracting risk in the face of an ever-changing regulatory landscape.”

– Dion Sheidy, Partner, KPMG

A holistic approach to complex challenges

From assessing the effectiveness of existing processes and identifying potential risks to improving the contracting work flow and developing internal processes to analyze, audit, and monitor physician relationships, KPMG provides a wide range of services to help providers reduce their physician contracting risk.

Our clients choose us because:

We provide objective compliance assessments: As a recognized and trusted thirdparty advisor, we take an objective view of your processes and controls to identify gaps and develop strategies for mitigating those gaps.

We deliver actionable advice and tactical support: Based on our assessment, we help our clients to develop or refine their policies, procedures, governance processes, and communications and reporting structures to better manage physician contracting risk. We will work with your internal audit and/or compliance resources to deliver results.

We take a multi-disciplinary and holistic approach: Our team consists of lawyers, nurses, compliance officers, and financial professionals who work together to take a holistic approach to evaluating, and helping our clients improve their physician arrangements.

We deliver lasting methodologies: We use our insight to help our clients drive sustainable change by embedding control improvements into their physician contracting, receivables, and payables processes.

We help clients move from strategy to reality: Our professionals do not just deliver robust strategies; they also help implement the recommended strategies in coordination with our clients' own legal, IT, operations, and compliance functions.

What is KDAT?

KDAT is KPMG's proprietary Data and Analytics platform that allows providers to efficiently combine and analyze databases in order to identify discrepancies and make connections between individual records. For example, KDAT allows clients to review accounts payables, identify payment trends, and analyze pertinent data points in order to assess referral sources.

Two immediate action items

1. Periodically review your agreements to help ensure that they are current and contain all of the necessary elements to satisfy the applicable Stark and Anti-Kickback expectations and safe harbor requirements, including:
 - Independent fair market value certifications
 - Prompt collection methodology for delinquent receivables (for income guarantees/ leases)
 - Terms of at least one year
 - Appropriate execution
2. Review your accounts payable/receivable reports and supporting disbursement documentation in conjunction with your agreements to ensure that payments are made and received in accordance with such agreements. These reviews should include work steps for:
 - Physician agreement audits
 - Income guarantee/lease audits

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