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Imaging Centers: Avoiding Problems in Joint Ventures and Other Arrangements

Thomas E. Jeffry, Jr., Esq.
Davis Wright Tremaine LLP
Los Angeles, CA



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Hypothetical # 1

- Slice PC, a group of orthopedic surgeons, is looking for a way to expand revenues by capturing at least a portion of the technical revenues from the imaging studies (MRIs) ordered by Slice physicians. Slice, however, does not order a sufficient volume of MRI scans to justify buying its own magnet. Vision, a radiology group, offers to open a new site near Slice's offices and to form a joint venture with Slice to own the MRI and lease it to Vision. Rent would be calculated on a per click basis.



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“Upstream” Joint Venture

- An equipment leasing company is a prime example of an “upstream” joint venture
- Key distinction: the joint venture entity is not a provider
- This avoids the Stark prohibition (at least in most cases)



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Stark Analysis

- Slice and Vision physicians have ownership interest in joint venture
- Joint venture has compensation arrangement (lease) with Vision, a provider of designated health services
- Analyzed as an indirect financial relationship under Stark



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Stark: Vision Physicians

- Vision physicians are radiologists – under Stark radiologists don't refer
- Thus, Vision physicians financial relationship with a provider of diagnostic imaging generally not relevant under Stark



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Stark: Slice Physicians

- Orthopedic surgeons do refer under the Stark law
- Thus, Slice physicians ownership interest in the joint venture does create a financial relationship that must be analyzed



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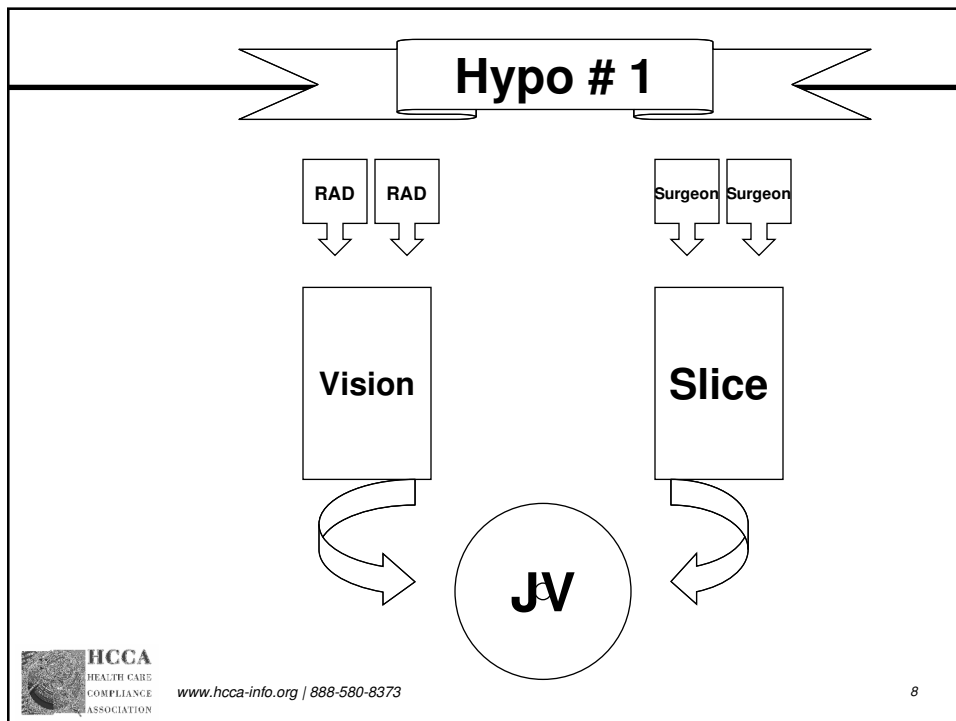
Indirect Compensation Relationship

- 3 part test
 - Unbroken chain of financial relationships between physician and DHS entity
 - Compensation arrangement closest to the physician varies with the volume or value of referrals
 - DHS entity knows



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Indirect Compensation

- Slice physicians who are employees and do not have an ownership interest in the group, the closest compensation relationship is their salary from the group
- Does their salary vary with volume or value of their referrals to the Vision Imaging Center?
- If not– no financial relationship



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Indirect Compensation

- For the Slice shareholders, however, the closest compensation arrangement will be the lease payments from Vision to the joint venture
- Rent is per click and, for purposes of the definition of indirect compensation arrangement is considered to vary with volume or value
- Thus, Slice shareholders likely have a financial relationship with Vision Imaging



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Indirect Compensation Exception

- This exception requires:
 - Agreement in writing, signed by the parties
 - Describes services covered
 - Payment fair market value and not based on volume or value
 - Arrangement does not violate Anti-kickback statute



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Indirect Compensation Exception

- Parties should be able to structure the lease to fit within the exception
- Key distinction: for the indirection exception per click payments are deemed not to be based on volume or value



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Anti-kickback

- The joint venture and related lease do raise kickback issues
- No safe harbor protection for either the investment interest or for the lease
- Facts and circumstances analysis
- Hanlester instructive in this analysis



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Anti-kickback

- Bottom line: some risk under the kickback law
- Try to structure the transaction to meet as many of the applicable safe harbor criteria as possible



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Reimbursement

- Joint venture is upstream, so reimbursement issues are really Vision's problem
- Lease of equipment should not trigger the purchased diagnostic test rule



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Hypothetical #2

- Slice reviews the pro formas for the Joint Venture equipment leasing company and is dissatisfied. Slice wants to operate the imaging center on a part time basis and bill under its own group provider number. What are Slice's options?



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Time Share Leasing – Stark
Indirect Compensation

- Slice must fit under the indirect compensation exception
- Indirect compensation analysis doesn't change for Vision



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Time Share Leasing – Stark
In-Office Ancillary

- Because Slice physicians order tests, these “referrals” must fit under a Stark exception
- Either the ordering physician personally performs the test or it must fit under the in-office ancillary exception



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In-Office Ancillary Exception

- Either exclusive use or DHS is in the same building as the practice
- 3 Tests for “same building”
- Does the group meet the definition of a “group practice”; is the group meeting the “same building” requirement?



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“Group Practice”

- (1) 2 or more physicians; (2) organized as a legal entity; (3) each physician who is a “member” provides substantially the full range of services which the physician routinely provides through joint use of shared office space, facilities, equipment, supplies and personnel; (4) substantially all of the services provided by members are billed under the group and treated as receipts of the group; (5) overhead and income of the group are distributed by pre-determined methods; (6) no compensation is based on the value or volume of referrals (except incentive payments under specific circumstances); and (7) members conduct no less than 75% of patient encounters of the group.



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“Same Building” – 3 Tests

- Group Centric Test - This test generally applies to buildings that are the principal place of practice for physicians or their groups.
- Patient Centric Test - This test generally describes a building where a referring physician practices medicine at least 1 day per week and that is the principal place in which the physician’s patients receive physician services.
- Specialist Centric Test - This test generally describes buildings in which the referring physicians (or group practice members, if any) provide physician services to patients at least 1 day per week and the DHS are ordered during a patient visit or the physicians are present during the furnishing of the DHS.



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Anti-kickback

- Lease by Slice raises potential anti-kickback issues – esp. if Slice contracts with Vision for the interpretation and/or supervision
- Safe Harbors – lease of equipment and space, personal services



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Anti-kickback

- How will the lease payment be structured?
 - Per Click
 - Per Block
 - Fixed



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Reimbursement

- Purchased Diagnostic Test Rule
 - How long/frequent are the blocks?
 - Who supplies the techs?
 - Adequate supervision?
 - Other indications of control?
 - Anti-markup rule if outside the “office of the physician or supplier.”



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Reimbursement

- Global billing by Slice?
- Who's performing the interpretation?
 - Purchased Interpretation
 - Reassignment
 - Split billing
- Are Vision rads reading on-site?



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Alternative to 100% Time Share

- Jointly owned IDTF
- IDTF to be its own "provider"
- New provider contracts
- Slice prohibited from referring to IDTF (but could time share lease with it)



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Hypothetical #3

- Sono, Inc. is a provider of on-site mobile ultrasound services to physicians
 - Equipment
 - Technician
 - Interpretation



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Hypothetical #3

- Medical practice provides
 - Scheduling
 - Demographic information
 - Location



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Hypothetical #3

- For commercial patients Sono charges group a per-service fee, and group bills
- For Medicare, group charges Sono a per-service fee, and Sono bills
 - Fee based on reasonable cost of facilities & services



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Hypothetical #3

- Stark
 - Is there a financial relationship?
 - Exceptions
 - Lease
 - Personal services
 - FMV compensation
 - Does the payment take into account value or volume of referrals or other business?



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Hypothetical #3

- Anti-Kickback
 - Is one purpose of the arrangement to induce referrals?



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Questions?

Thomas E. Jeffrey, Jr.
Davis Wright Tremaine, LLP
Los Angeles, CA
tomjeffry@dwt.com
(213) 633-6800



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