Objectives

By the end of this course you should:

• Be familiar with Navicent’s Work Instruction regarding Financial Arrangements with Physicians
• Be familiar with the Stark Law and it’s exceptions
• Know what Fair Market Value is
• Understand why Compliance matters with Stark and Anti-Kickback Laws
• Understand the Contract Management process for Navicent
Purpose of the Work Instruction (108.5534)

• This work instruction is intended to provide guidance regarding the Navicent protocol on initiating, documenting and implementing appropriate financial relationships with physicians and their family members, physician groups, physician-affiliated entities, other practitioners and affiliated entities who are in a position to make or influence referrals of business to Navicent and any of its entities.
What is the Scope of this Policy?

• All Arrangements entered into, amended, renewed or assigned by Navicent with:
  – Physicians and their family members
  – Physician groups
  – Physician-affiliated entities, i.e. physician owned companies.
  – Other practitioners and affiliated entities who are in a position to make or influence referrals of business to Navicent and any of its entities.
Why is this Important?

• Review of physician contracts is critical to an effective compliance program.
• There is increased regulatory scrutiny on these arrangements, as well as increased enforcement actions and penalties.
• Physician contracts are regulated by: Stark, Anti-Kickback Law and the False Claims Act.
What is the Stark Law?

• Bans physician from referring government beneficiary to entity for certain health care services when the physician or their immediate family member benefit financially or have a financial relationship with that entity.
• Intent is to eliminate financial motivation for physicians to send patients for unnecessary testing that could raise health care costs.
• Includes multiple safe harbors including physician employment and other agreements with providers.
Stark Exceptions: Employment Arrangements

• To meet safe harbor, employment arrangement must be:
  – For identifiable services
  – Compensation must be fair market value
  – Compensation does not take into account volume or value of referrals (includes exceptions for productivity bonuses that meet Stark requirements)
  – Compensation is commercially reasonable even if no referrals were made to employer.
What is Commercial Reasonableness?

• There must be overall need for the physician services and hospitals must ensure the number and complement of physician expertise is consistent with the health system’s size and scope of operations.
What is Fair Market Value?

• Fair market value is the value in arm’s-length transactions, consistent with the Compensation that would be included in a Personal Services Agreement, as the result of bona fide bargaining between well-informed parties to the agreement who are not otherwise in a position to generate business for the other party at the time of the Personal Service Agreement.

• How do we find FMV?  Survey data (i.e. MGMA), outside evaluator opinions.
Stark Exceptions: Personal Services

To meet safe harbor, personal services contract must be:

- In writing
- Signed by both parties
- For identifiable services, all of which are specified in agreement
- In most circumstances, cannot be modified in first year of contract
- Compensation must be set in advance, specified, and fair market value
- Compensation does not take into account volume or value of referrals (includes exceptions for productivity bonuses that meet Stark requirements)
- Compensation is commercially reasonable even if no referrals were made to employer
Stark Exceptions: Rental of Space

- To meet safe harbor, lease must be:
  - Written agreement
  - Specifies space
  - Term of more than one year
  - Commercially reasonable
  - Charges set in advance
  - FMV
  - Not based upon volume or value of referrals
  - Reasonable for legitimate business purposes of lease
Why does Compliance with Stark matter?

• Noncompliance with Stark can have serious financial consequences as the law prohibits payments to the health system for certain services when an arrangement violates the Stark Law.

• Noncompliance with Stark can be used to form the basis of a False Claims Act action.
  – Adventist Health System paid $118.7 million in 2015 to settle allegations it offered doctors excessive compensation for referrals.
  – Columbus Regional and a local doctor paid more than $25 million to resolve allegations it violated FCA, in part, by paying doctor excessive salary and directorship payments.
  – North Broward Hospital paid $70M to settle allegations it paid doctors far more than FMV.
What is the Anti-Kickback Statute?

- The AKS is a criminal law that prohibits the knowing and willful payment of "remuneration" to induce or reward patient referrals or the generation of business involving any item or service payable by the Federal health care programs (e.g., drugs, supplies, or health care services for Medicare or Medicaid patients). Remuneration includes anything of value and can take many forms besides cash, such as free rent, expensive hotel stays and meals, and excessive compensation for medical directorships or consultancies.

- The OIG notes that entities can be found guilty of AKS violations even if they actually rendered the service and the service was medically necessary.

- Single Purpose Rule: If even one purpose of contract is to induce referrals = AKS violation.

- Similar safe harbor requirements to Stark.
Why does Compliance with AKS matter?

- Delaware health system paid $3.3 million to settle allegations related to overpaying physicians for in-hospital readings of EEGs as “reward” for referring patients.
- Ohio hospital paid $108 million to settle allegations related to limiting opportunity to work at certain centers in hospital to those cardiologists that referred business, contributed to gross revenues, etc.
- Individuals can also be held liable for violations of the AKS. For example, a former senior executive of Tenet Healthcare Corporation was recently indicted for his alleged role in paying kickbacks in return for the referrals of patients.
Navicent’s Contract Management Program

• We use Compliance 360 to manage the contract life cycle from initiation to execution.

• Responsible Managers and Supervising Executives will be designated for each contract. All Responsible Managers and Supervising Executives will be trained by the Office of General Counsel in this process.

• All contracts should be reviewed and approved by the Office of General Counsel. The Office of General Counsel can help you determine if a contract should be initiated through the Compliance 360 process.
Steps Required to Initiate Contract

1. Responsible Manager will document the business purpose for each Arrangement and maintain that document in the ordinary course of business.

2. Responsible Manager will work with Office of General Counsel to determine if FMV will be conducted internally or through external counsel. If needed, external counsel will be obtained.

3. Responsible Manager will work with Office of General Counsel to ensure contract is drafted utilizing approved templates.

4. Responsible Manager or Supervising Executive will work with Office of General Counsel to ensure (1) draft contract, (2) FMV documentation, and (3) any other supporting documentation is loaded into C360.
Contract Review

• Compliance 360 includes review by:
  – Responsible Manager
  – Supervising Executive
  – Office of General Counsel
  – Office of Corporate Compliance
  – Chief Financial Officer

• All parties must approve contract for any contract to be executed. No contract should be executed without Compliance 360 approval processes being complete.

• After CFO approval, contract will be forwarded to Responsible Manager to obtain Practitioner signature.

• Once signed by Practitioner, contract will be resubmitted to contract database to Office of General Counsel, which will coordinate execution by Navicent.
Ongoing Review

• Periodic audits will be initiated by Office of Corporate Compliance and Office of Audit Services to ensure compliance of all Arrangements with the Work Instruction.

• Responsible Manager and Supervising Executives are responsible for monitoring Arrangements to ensure Practitioners document services as required by each Arrangement.
Noncompliance

• Noncompliance will be reported to the Office of Corporate Compliance and Human Resources for determination of disciplinary action in accordance with Navicent policies.
Questions and Concerns

• Please direct any questions and concerns regarding this work instruction to:
  – Office of General Counsel (633-6980)
  – Office of Corporate Compliance (633-1223)
Navicent Health Financial Arrangements with Physicians Training Declaration

“I certify that I have completed the training session titled “Navicent Health Financial Arrangements with Physicians Training.” I understand that I am obligated to follow compliance requirements and to ask questions as needed to assure my understanding.”

“I also understand that it is my obligation to report concerns about possible non-compliance, and that I may meet that obligation by discussing my concerns with a member of the Corporate Compliance team or by calling the Navicent Health Helpline at 888-380-9008.”

Click here to document that you have reviewed this module.