

# WEISS



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Did they intend to defraud the carrier?

That was the subject of Monday's blog post, **How Medical Group Collaboration Creeps into Fraud—Pass-Through Billing**. You can follow the link to read the post online, or just keep reading.

Hospital-based medical groups, notably anesthesiology and radiology groups, are increasingly returning to creative means to provide coverage and to improve collections. Both are laudable goals. However, some groups cross the line from collaboration to fraud via pass-through billing

Pass-through billing is the healthcare industry term used to describe billing by one entity for services or items that were actually provided by a different entity.

In the context of physician services, issues of pass-through billing most often arise when services actually provided by physicians employed by or contracted to one medical group ("Group A") are billed by a different medical group ("Group B"). Group B bills for those services under its name, tax identification number, and provider agreements with one or more payors. To the payors, the Group A physicians appear to be Group B physicians—but are they? The object is most often to obtain the higher reimbursement associated with Group B's contract rates, a form of payor rate arbitrage. It might also be to make out of network physicians appear to be in-network.

## ***What's Wrong With Pass-Through Billing of Services?***

So why should you care?

The simple answer is that you likely want to keep your medical license, don't want to be liable for civil damages including significant punitive damages for fraud, and want to avoid potential criminal prosecution.

I've yet to see a payor agreement that doesn't limit the individuals whose services may be billed pursuant to its terms to those providers who are members of the contracted group. How "members" are defined varies, but it's nearly always clear that the definition does not include physicians and other providers employed by another group. A violation triggers breach of contract claims, fraud claims, and, on the criminal side, depending on how claims were transmitted, mail fraud, wire fraud, and other state and federal violations.

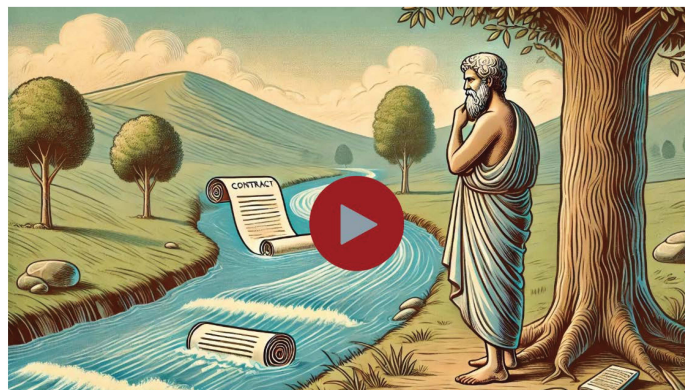
Depending on the circumstances, the arrangement might also violate state or federal anti-kickback laws, criminal false claims laws, and prohibitions on "fee splitting".

Pass-through billing can also implicate state medical ethics and "unprofessional conduct" requirements, leading to medical board discipline.

### ***Some Immediately Actionable Takeaways***

Before even considering any arrangement in which your group bills for the services of another group's members, obtain legal advice to interpret the limitations of all impacted payor agreements. The same advice applies in reverse, i.e., in the case in which members of your group are going to have their services billed through another group's TIN.

There are, depending upon the particular arrangement, potential end runs around contractual pass-through billing prohibitions, but they are highly fact specific and technical. Depending on your appetite for risk, they can and should be explored.



## What Every Physician Must Know About Gilead Sciences' \$202 Million Kickback Settlement

On April 29, 2025, the Department of Justice announced that pharmaceutical giant Gilead Sciences agreed to pay \$202 million to settle civil allegations that it paid kickbacks in the form of speaking fees, exorbitant meals, alcohol, and travel, to physicians via its HIV Speaker Program in violation of the Anti-Kickback Statute (AKS) and, a result, submitted claims in violation of the False Claims Act.

Although the popular press focuses on the hit to Gilead, physicians should focus on the fact that, in cases such as this, it takes two to tangle: Every dollar in alleged kickbacks paid by Gilead to a physician was a dollar in potential kickbacks received by a doctor equally in violation of the AKS.

The settlement resolved civil claims against Gilead. The deal did not include any resolution of potential criminal liability. Will the feds pursue Gilead criminally? At this point it's unclear.

However, for physicians, the better question is will the doctors who accepted Gilead's bounty escape either or both civil or criminal liability for their part in the bargain?

Those physicians, and doctors in general, should understand that, in the settlement agreement, Gilead made a plethora of admissions, including the following:

- Gilead paid many high-volume prescribers of HIV drugs tens or hundreds of thousands of dollars in honoraria to prepare and present as HIV Speakers. For instance, one HIV Speaker, who received over \$300,000 in total honorarium payments, wrote prescriptions for Gilead HIV Drugs that resulted in over \$6 million in Medicare, Medicaid, and TRICARE payments.
- On many occasions, Gilead covered the travel costs of physician speakers who traveled long distances to speak at HIV Speaker Programs at desirable travel destinations, such as Hawaii, Miami, and New Orleans. This was sometimes in response to an HIV Speaker's request to be booked for an HIV Speaker Program in that city.
- Sales representatives in Gilead's HIV therapeutic area ("Sales Representatives") organized HIV Speaker Programs at high-end restaurants across the country. For instance, a significant percentage of the HIV Speaker Programs held in New York City were held at expensive restaurants, such as the James Beard House, Del Posto, Asiate, Palma, Vacluse, Ilili, and Limani. In particular, Gilead held 157 HIV Speaker Programs at the James Beard House, making it one of Gilead's most used venues for HIV Speaker Programs. A dinner at the James Beard House typically included approximately six courses with alcoholic beverage pairings.
- Sales Representatives repeatedly invited numerous doctors and other healthcare providers to attend the same HIV program over and over. Many repeatedly attended HIV Speaker Programs covering the exact same topic, often within a short period of time.

- Over 250 prescribers of the Gilead HIV Drugs attended HIV Dinner Programs on the same topic three times or more within a six-month period. And over 80 of them attended five or more HIV Dinner Programs on the same topic within a six-month period.
- Further, many healthcare providers who were paid to be HIV Speakers on a particular topic also attended HIV Dinner Programs on exactly the same topic, often within less than six months after speaking.
- In certain instances, the same group of doctors repeatedly attended the same HIV Speaker Programs together at various restaurants. In many instances, they attended a HIV Dinner Program less than two weeks after speaking on the same topic.
- During the Relevant Time Period, Gilead's policies and procedures failed to prevent Sales Representatives and Regional Directors in its HIV therapeutic area from improperly providing honoraria payments, meals, and travel expenses to healthcare providers who spoke at or attended HIV Speaker Programs to induce them to prescribe the Gilead HIV Drugs.

To top it off and drive the point home for doctors, Gilead agreed, as a condition to the settlement, "to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Stipulation." You can read that as the investigation of physicians.

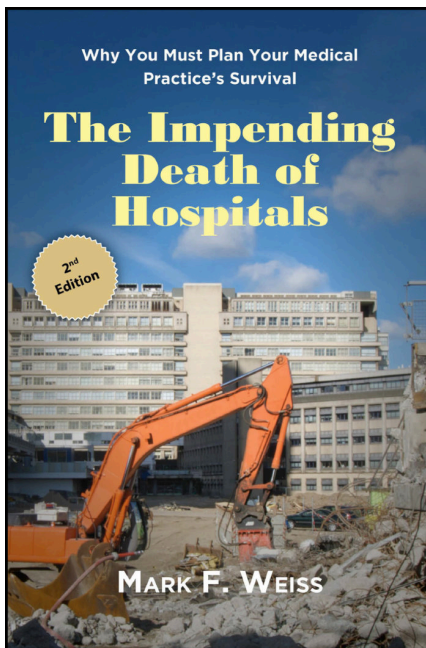
At the end of the day, for physicians, the story isn't specifically about Gilead or pharma, it's about you.

If your speaking gigs look more like Napa Valley retreats or Aspen ski trips than knowledge-sharing, you're not an educator, you're Exhibit A in some whistleblower complaint or a defendant in some other civil suit, or worse, in a criminal prosecution.

Vet every speaking fee or honoraria or travel reimbursement and so on, any form of remuneration, carefully. Get competent legal advice. What you'll spend to evaluate the bona fides of a potential arrangement isn't even one one-hundredth of what it will cost you in a civil action or, and it goes without saying, a criminal prosecution.

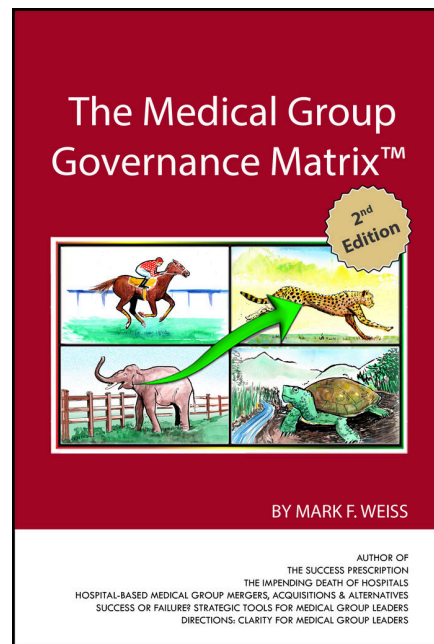
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