

2016 Stark Law Updates

April 26, 2016

Centers for Medicare and Medicaid Services (CMS) issued the 2016 Medicare Fee Schedule (the "Schedule") in an effort to facilitate compliance with the Physician Self-Referral Law (the "Stark Law"). Generally, absent an exception, the Stark Law prohibits a physician from making referrals for designated health services payable by Medicare to an entity with which the physician has a financial relationship. Among other changes, the Schedule clarified the writing requirements for exceptions to compensation arrangements, and provided two new exceptions. The Schedule clarified that contemporaneous documents evidencing the course of conduct between the parties, instead of a single formal contract, could be sufficient for a compensation arrangement to meet an exception. Examples of such documents include board meeting minutes, timesheets, and written communication. These documents must clearly relate to one another and a signature is required on at least one of them. Finally, the documents must evidence the arrangement that was in place before any referrals were made between the parties. The first new exception is for remuneration from a hospital to a physician to assist the physician with compensating a nonphysician practitioner (NPP) for furnishing services to patients of the physician's practice. Substantially all of the services furnished by the NPP must be primary care and/or mental health services. The remuneration from the hospital may not exceed 50 percent of the actual compensation, signing bonus, and benefits paid by the physician to the NPP during the first two years of the arrangement. The second new exception is for timeshare arrangements that include the use of premises, equipment, personnel, items, supplies, or services. This exception covers "use" arrangements only and does not cover traditional office space leases. This exception is predominately for the provision of evaluation and management services to patients.

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