



CMS Proposes Amendments to Stark Law

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On July 15, 2015, the Centers for Medicare & Medicaid Services (CMS) published proposed regulations governing policies and payments made under the 2016 Physician Fee Schedule (Proposed Rule). Notably, the Proposed Rule includes clarifying guidance and amendments to the regulations implementing the federal physician self-referral law, Stark Law, including two new exceptions and revisions to regulatory definitions.¹ For a full text copy of the Proposed Rule, click [here](#)².

CMS is accepting comments to the Proposed Rule until 5 p.m. on September 8, 2015, and it anticipates issuing a final rule by November 1, 2015.

Among the most notable proposed amendments to current regulations are the following:

New Exception for Timeshare Arrangements

The first proposed exception relates to so-called “timeshare arrangements.” CMS proposes a new Stark Law exception for “timeshare arrangements” for the use of office space, staff and equipment where the arrangements are structured as a license (as opposed to a lease). Importantly, the proposed exception may only be used for timeshare arrangements between a hospital or physician organization (licensor) and a physician (licensee) for the use of the licensor’s premises, equipment, personnel, items, supplies or services. Moreover, the proposed exception would require that the licensed premises, equipment, personnel, items, supplies and services be used by the physician to furnish predominantly “evaluation and management” services to patients of the licensee.

New Exception for Non-Physician Recruitment Assistance

The second proposed exception will permit payments by hospitals, federally qualified health centers and rural health centers to physicians to assist with the employment of non-physician practitioners. The current Stark Law regulatory exception limits the applicability to the recruitment of only physicians and does not include non-physician practitioners. The proposed exception stems from current primary care workforce shortages and the increasing need for access to primary care services. As proposed, the exception would apply only where the non-physician practitioner is a bona fide employee of the physician receiving the remuneration, and the purpose of such non-physician practitioner’s employment is to only provide primary care services to the physician’s patients. Also, CMS is proposing to define “non-physician practitioner” to include only physician assistants, clinical nurse specialists, and certified nurse midwives. The purpose of this proposed exception is to meet the increased demand for primary care practitioners resulting from expanded access to healthcare created by the Affordable Care Act.

¹ The Stark law generally prohibits (1) a physician from making referrals for certain “designated health services” (DHS) payable by Medicare to an entity with which he or she (or an immediate family member) has a financial relationship, unless the requirements of an applicable exception are satisfied; and (2) the entity from filing claims with Medicare (or billing another individual, entity, or third party payer) for those DHS furnished as a result of a prohibited referral.

² <https://www.federalregister.gov/articles/2015/07/15/2015-16875/medicare-program-revisions-to-payment-policies-under-the-physician-fee-schedule-and-other-revisions>.

Clarification of “Writing” and “Agreement”

CMS proposes to clarify that the writing required by certain Stark Law compensation exceptions (including, for the rental of office space, the rental of equipment and personal service arrangements) may be documented in a collection of writings rather than as a single, formal contract. To create uniformity among the various compensation exceptions, CMS also proposes to substitute the term “arrangement” for “agreement” in these and other exceptions that require writings, including the physician recruitment and fair market value compensation exceptions.

Temporary Noncompliance with Signature Requirements

CMS proposes to expand the rule regarding temporary noncompliance with signature requirements to allow up to 90 days for the obtaining of all required signatures, regardless of whether a late signature is intentional or inadvertent. Under the current rule, when a failure to comply with the signature requirement occurs, the parties must obtain the required signature(s) within 30 days.

One-Year Term

CMS clarified that an explicit “term” provision within a formal contract or other document is generally not necessary to satisfy the one-year requirement under the Stark Law exceptions for the rental of office space, rental of equipment and personal service arrangements. According to CMS, the one-year term requirement is satisfied when an arrangement lasts for one year, as a matter of fact.

Holdover Arrangements

CMS proposes to amend the six-month holdover provisions within the Stark Law exceptions for the rental of office space, rental of equipment and personal service arrangements, to permit either indefinite holdovers or, in the alternative, to extend permitted holdovers to a definite period greater than six months, provided that certain additional safeguards are met.

Stand in the Shoes

When applying the “stand in the shoes” rule regarding when a physician is treated as “standing in the shoes” of his or her physician organization, CMS proposes that the signature requirement is met when an arrangement is signed by the physician organization or any physician who stands in the shoes of such organization.

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