



Proposed Stark Law Changes May Impact Physician Compensation Models

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On October 9, 2019, the Centers for Medicare and Medicaid Services ("CMS") proposed sweeping changes to the federal Physician Self-Referral Law, commonly referred to as the Stark Law. While many of the changes reflect CMS' intent to allow greater flexibility to address certain value-based compensation arrangements, a somewhat overlooked proposal could have a material effect on how physician group practices allocate profits from Stark Law designated health services ("DHS"). Currently, many physician group practices, especially large or multi-specialty practices, allocate DHS profits to its physicians based on DHS categories. The result is that profits from one DHS category (e.g., imaging services) may be allocated to certain physicians in the group practice while profits from a second DHS category (e.g., physical therapy) may be allocated to a different (or possibly overlapping) subset of physicians in the group practice. Under the proposed rule, CMS would eliminate this approach and require that profits from all DHS be aggregated and distributed to either all physicians in the group practice or a component of at least five physicians in the group practice.

By way of background, the Stark Law prohibits a physician owner or employee of a medical practice from ordering DHS from the medical practice paid by Medicare or Medicaid, unless a Stark Law exception applies. DHS includes, among other items, clinical laboratory services, physical, occupational and speech therapy, certain imaging services, radiation therapy, durable medical equipment, and outpatient prescription drugs. Under the Stark

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Law, a medical practice with at least two physicians must qualify as a "group practice" to take advantage of the Stark Law in-office ancillary services exception, which is often used to allow a physician owner or employee to order DHS from his or her medical practice. As part of the group practice requirements, DHS profits must be distributed to all physicians in the group, or to a pod of five or more physicians, in a manner that does not directly take into account the volume or value of a physician's referrals for DHS.

Download and read the full article, "Proposed Stark Law Changes May Impact Physician Compensation Models" written by Howard Bogard.