

# Healthcare Law Alert – CMS Talks Sense for Stark Compliance under Proposed 2016 Medicare Physician Fee Schedule

On July 8, 2015, the Centers for Medicare & Medicaid Services (“CMS”) released a proposed rule that could provide some much needed breathing room for inadvertent lapses in Stark law compliance. By way of background, the physician self-referral or “Stark” law governs financial relationships between physicians and “designated health services” entities. The law provides limited exceptions for when a physician may enter into a financial relationship with a designated health services entity where he or she refers business payable by Medicare to that entity. CMS will publish the proposed rule in the Federal Register on July 15, 2015.

The July 8, 2015 fact sheet reveals that CMS’s experience with Stark self-disclosures made clear that additional guidance and clarification of certain terminology “could reduce perceived or actual technical noncompliance without risk of abuse.” CMS summarizes its proposed changes as follows:

- To clarify that the writing required by the exceptions may be a collection of documents and to make the terminology describing the types of arrangements consistent throughout the regulations;
- To clarify that the term of a lease or personal services arrangement need not be in writing if the arrangement lasts at least 1 year and is otherwise compliant;
- To allow expired leasing and personal services arrangements to continue on the same terms if otherwise compliant;
- To allow a 90-day grace period to obtain missing signatures without regard to whether the failure to obtain the signature was inadvertent;
- To clarify that DHS entities can give items used solely for specific purposes to physicians;
- To clarify that a financial relationship does not necessarily exist when a physician provides services to patients in the hospital if both the hospital and the physician bill independently for their services;
- To update obsolete language in the exception for ownership in publicly traded entities to allow over-the-counter transactions and delete certain unnecessary language;
- To establish a new exception permitting time share arrangements for the use of office space, equipment, personnel, supplies and other services to benefit rural or underserved areas;
- To clarify that compensation paid to a physician organization cannot take into account the referrals of any physician in the physician organization, not just a physician who stands in the shoes of the physician organization; and
- To seek comments on physician self-referral changes and guidance needed to advance alternative payment models and value-based purchasing.

Currently, the inadvertent failure to obtain a signature in a timely fashion or the failure to renew an

arrangement that expired on its own terms after 1 year meant that a self-disclosure was necessary. Intent is irrelevant under Stark. So that the parties' belief that they were operating under a formally executed agreement was irrelevant. The proposed changes bring some much needed common sense and flexibility to Stark compliance.

More information on these and other changes in the proposed changes to the 2016 Medicare Physician Fee Schedule is available from the following links:

CMS Fact Sheet: <http://www.cms.gov/Newsroom/MediaReleaseDatabase/Fact-sheets/2015-Fact-sheets-items/2015-07-08.html>

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

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