

## Stark Regulations Updated to Include New Exception for Recruitment of Non-Physician Practitioners

On January 1, new regulations regarding the Physician Self-Referral Law, or “Stark Law,” went into effect. <sup>[1]</sup> Overall, this fifth update to the Stark rules is good news for providers. In addition to relaxing several technical requirements,<sup>[2]</sup> CMS has added a new Stark exception that allows hospitals, rural health clinics (“RHCs”), and federally qualified health care centers (“FQHCs”) to assist in recruiting non-physician practitioners (“NPPs”), defined as physician assistants, nurse practitioners, clinical nurse specialists, certified nurse-midwives, clinical social workers, and clinical psychologists.<sup>[3]</sup>

Under the new exception, a hospital, RHC, or FQHC may provide remuneration to a physician or physician group in order to assist with recruiting, hiring, and compensating an NPP if all of the following conditions are met:

1. The NPP is a direct employee or a direct contractor of the physician/group (i.e., the contract may not be with a staffing agency);
2. Substantially all (which CMS interprets to be at least 75% [4]) of the NPP’s services under the arrangement are primary care or mental health care services;
3. The NPP has not practiced or otherwise been employed/contracted by another physician/group in the geographic area served by the hospital, RHC, or FQHC for a period of at least one year preceding the compensation arrangement;
4. The arrangement is set out in writing and signed by the hospital, RHC, or FQHC as well as the physician/group and the NPP;
5. The arrangement is not conditioned on referrals by the physician or the NPP to the hospital, RCH, or FQHC;
6. The compensation does not take into account the volume or value of any actual or anticipated referrals from the physician or NPP or other business generated between the parties;
7. The physician does not impose practice restrictions on the NPP that unreasonably restrict the NPP’s ability to provide patient care services in the geographic area; and
8. The remuneration is not more than half of the NPP’s actual compensation, signing bonus, and benefits, and the assistance is limited to the two-year period beginning with the NPP’s employment/contract arrangement.



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The rule limits how often a hospital, FQHC, or RHC may use this exception (generally, no more than once every three years for the same referring physician) and sets forth procedures to replace an NPP who leaves the physician/practice within one year of being recruited under this exception. Finally, the proposed arrangement may not grant the NPP an ownership or investment interest in a physician organization and must also comply with the federal Anti-Kickback Statute.

Providers contemplating NPP recruitment arrangements must strictly satisfy each provision of the Stark exception. Noncompliant providers may be required to repay all federal reimbursements tied to the offending arrangements and may also face civil monetary penalties and Anti-Kickback Statute liability. Accordingly, providers are well advised to have these arrangements reviewed by legal counsel. When it comes to Stark compliance, an ounce of prevention is worth far more than a pound of cure.

<sup>[1]</sup> 80 Fed. Reg. 70886 (Nov. 16, 2015).

<sup>[2]</sup> The subject of a future client alert.

<sup>[3]</sup> 42 C.F.R. §411.357(x). The NPP recruitment exception is modeled after the existing Stark exception for physician recruitment arrangements.

<sup>[4]</sup> 42 C.F.R. § 411.352(d); 80 Fed. Reg. at 71308.

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