

October 24, 2007

Health Law Client Action Alert

Stark III Regulations Require Immediate Action

The new amendments to the federal Stark Law regulations take effect on December 4, 2007. (See our Health Law Client Newsletter dated September 11, 2007.) In order to avoid serious risks, all providers of designated health services (“DHS”) subject to the law should take certain immediate steps to ensure that they do not have arrangements that will become illegal on December 4. Most dangerous is the new “stand in the shoes” rule that treats an arrangement with a physician practice entity as being directly with the physician. An illegal agreement would prevent the provider from billing for any Medicare-covered services ordered by the physician in question.

1. All DHS providers should make an inventory of any arrangements--whether written or not--that result in either payments to a physician practice group, directly or indirectly, or the provision of any items or services (including leases of property) to a physician practice group. Prior to the new regulations, many such arrangements were not subject to the Stark Law at all. As of December 4, all such arrangements must qualify for an exception under the Stark Law. (There is a very limited “partial grandfather provision” that protects only certain written agreements that were in place prior to September 5, 2007, for the current term of those agreements. However, this applies only to those agreements that meet the specific requirements of the law’s exception for indirect compensation arrangements--even as to arrangements that previously did not need to qualify for any exception. Therefore, all arrangements should be reviewed.)

2. All written arrangements should be reviewed to determine whether they qualify for an exception under the law. For example, many lease arrangements and service arrangements with practice groups now will need to meet specific requirements concerning the rent and the term. “Office sharing” agreements with practice groups will need to meet new requirements concerning the exclusive use of the examination rooms and certain other areas.

3. Any oral arrangement with a practice group should be reduced to writing and signed by the parties before December 4. This applies even to apparently minor arrangements such as those involving sales of supplies to physician offices.

4. Arrangements that do not qualify for an exception should be terminated or amended to make them compliant before December 4. In addition, any payments remaining to be made under the prior agreements should be made before December 4.

5. Group practices that have arrangements with independent contractor services to perform services at the group's offices should, in most cases, enter into written agreements with the individual physicians, not their practice groups. This is now necessary for the independent contractor to qualify as a "physician in the group practice."

The new regulations contain other changes that may impact current arrangements with physicians and entities that they own. The above list is not intended to be comprehensive.

In light of the time frame for accomplishing these tasks, we encourage all clients to act immediately on this matter. Please let us know if we can assist you in this effort.

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Attorney Joins Toledo Office

We are pleased to announce the addition of attorney Karl Strauss to our Toledo health law team.

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If you have questions concerning this newsletter, please call Dennis Witherell or Jenifer Belt at 800-444-6659, or Ron Christaldi, Barbara Pankau or Erin Aebel at 800-677-7661.

This newsletter is designed to provide general information on matters of interest to health care providers and practitioners and is not intended to constitute legal advice.