

NEW STARK REGULATIONS AND PHYSICIAN RECRUITING Stark II Phase III

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In September of this year the Center for Medicare and Medicaid Services (CMS) released final regulations implementing Phase III of the Stark Law. These regulations include provisions pertaining to physician recruiting arrangements.

In particular, they amend previous Stark physician recruiting regulations that were released in 2004. One of the 2004 regulations stipulated that a hospital funding recruitment for an existing medical group could only pay for “additional incremental expenses” that accrue to the group because of the new physician. It could not pay for a pro-rated share of the group’s fixed overhead expenses such as office rent, equipment, or personnel, unless such expenses were a direct result of the new physician joining the group.

This regulation has proven to be a stumbling block for hospitals and medical groups. A problem arises when an existing medical group loses a physician to retirement, death or relocation. Prior to the 2004 Stark regulations, a hospital could assist an established medical group to find a new physician by providing a salary or income guarantee to the incoming physician and allocating to the new physician a pro rata share of existing office space, equipment, personnel and other overhead expenses associated with the new physician’s practice for one year. Without such assistance, smaller medical groups that lost a physician were burdened with increased overhead and could get no relief from their affiliated hospital.

Fortunately, the new Stark regulations released in September create an exception to the so-called “incremental expenses” rule. In cases where an established medical group in a medically underserved area is replacing a deceased, retiring, or relocating physician, the hospital *can* pay for a pro-rated share of the group’s fixed overhead expenses, such as office rent, equipment, or personnel, not to exceed 20% of the practice’s aggregate costs. This is good news for largely rural states such as Nebraska and Kansas where many smaller communities are served by small medical groups that require hospital assistance to recruit effectively. Merritt, Hawkins & Associates helped rally support for this change and it is gratifying that CMS responded to our comments and those of other concerned parties.

In addition, previous Stark regulations prohibited established medical groups from imposing non-compete agreements on new recruits, if the groups are receiving financial physician recruiting assistance from a hospital. The new Stark regulations amend this rule and allow medical groups receiving financial physician recruiting assistance from a hospital to impose non-competes on new recruits provided such arrangements are acceptable under state law.

The new Stark regulations also permit rural hospitals to recruit into an area outside of the hospitals' geographic service area if it is determined through a CMS advisory opinion that the area has a demonstrated need for the recruited physician. Further, the new regulations amend the definition of a hospital's service area and expand the types of physicians who can be recruited from within the hospital's service area.

The new Stark regulations can viewed at <http://www.cms.hhs.gov/PhysiciansSelfReferral/Downloads/cms.F.pdf>. The physician recruiting provisions are addressed in section "E." (p.210) Please keep in mind that Merritt, Hawkins & Associates is not a law firm and does not provide legal advice. It is important to have all physician recruiting regulations reviewed by an attorney who is well versed in this area of the law.

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