



CMS Releases Stark II Phase III Rules

Presenter:

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Today's Presenter



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Stark Overview

- Basic Prohibitions in Stark
 - Absent an exception, a physician may not refer a Medicare patient for “designated health services” to an entity with which the physician or an immediate family member has a “financial relationship.” An entity may not present a claim for payment for such services.
 - A **financial relationship** means (i) an ownership or investment interest, or (ii) a “compensation arrangement” between the referring physician and the provider



Stark Overview (cont'd)

- Stark I Applies to Referrals for Clinical Laboratory Services

- Stark II Applies to **Designated Health Services**:
 - Clinical laboratory services
 - Physical therapy services
 - Occupational therapy services
 - Radiology, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services
 - Radiation therapy services and supplies



Stark Overview (cont'd)

- Durable medical equipment and supplies
- Parenteral and enteral nutrients, equipment and supplies
- Prosthetics, orthotics and prosthetic devices and supplies
- Home health services
- Outpatient prescription drugs
- Inpatient and outpatient hospital services



Stark Overview (cont'd)

■ Penalties:

- Payment denial/recoupment by Medicare and Medicaid
- Civil monetary penalties up to \$15,000 per prohibited service/billing
- Circumvention schemes face civil monetary penalties of up to \$100,000 per incident
- Exclusion from Medicare/Medicaid participation



Stark Overview (cont'd)

■ Stark Regulatory Scheme

- Stark I Final Regulations (August 14, 1995)
- Stark II, Proposed Regulations (January 9, 1998)
- Stark II, Phase I (January 4, 2001)
- Stark II, Phase II (March 26, 2004)
- Stark II, Phase III (September 5, 2007)

Effective: December 4, 2007



Stark Overview (cont'd)

- Other Recent Developments in Stark
 - Proposed Changes in Physician Fee Schedule
(Stay Tuned: November 1, 2007 Deadline)
 - “Per Click” Leases
 - Percentage Based Compensation
 - Under Arrangements Deals and Definition of “Entity”
 - Pending Legislation Could Limit the “Whole Hospital” Exception



Stark Overview (cont'd)

- Disclosure of Financial Relationship Reports
 - This fall, 500 Hospitals Are Required to Disclose All Financial Relationships With Physicians
 - Later, CMS Will Require **All Medicare Participating Hospitals** to Follow Suit
 - This Represents a New Era in Stark Enforcement
 - Medicare Contractors Will Review These Arrangements for Compliance, and Report Results to CMS for Follow-Up
 - This May Be the Biggest Development of All



Stark II, Phase III – Key Changes

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■ Recruitment

- Recruiting Into the Geographic Service Area v. Recruiting From Outside the Area to Come Inside the Area (exceptions are: physicians employed full-time at least 2 years by (i) prison bureau, (ii) DoD, VA or (iii) Indian Health Service) Staff Model HMO physicians?
- Defining the Geographic Service Area
 - Expanded for Certain Hospitals
 - Also -- It Can Be a Different Area for Each Recruit



Stark II, Phase III – Key Changes (cont'd)

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- Allocating Overhead When “Joining” a Group
- “Reasonable” Restrictions OK When Joining a Group
- Side-by-Side Recruitment is OK
- Indirect Compensation
 - Direct v. Indirect Financial Relationships
 - Definition of When an Indirect Compensation Arrangement Exists
 - Exception for Indirect Compensation Arrangements



Stark II, Phase III – Key Changes (cont'd)

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■ “Stand in the Shoes”

- DHS Entity → Physician Organization → Individual Physician
 - This **was** either (i) an Indirect Compensation Arrangement or (ii) No Financial Relationship
 - This **will be** a Direct Compensation Between the DHS Entity and Every Physician



Stark II, Phase III – Key Changes (cont'd)

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- Each Physician “Stands in the Shoes” of the Physician Organization
- Now, a Direct Compensation Exception is Required
- What is a “Physician Organization”?
- Note: There is a Limited “Grandfathering” Provision

- Space Leases
 - Sharing Space
 - Examine room
 - Blocked leases v. Ad Hoc Sharing





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Stark II, Phase III – Key Changes (cont'd)

■ Elimination of “Safe Harbor” for Determining Fair Market Value Compensation

- There was a “safe harbor,” within the definition of “fair market value,” for hourly payments to physicians for their personal services that met certain benchmarks.
- CMS has eliminated this option.
- Why?
- Does this help or hurt?



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Stark II, Phase III – Key Changes (cont'd)

■ “Holdover” Provisions for Personal Services Arrangements

- Up to 6-Months Past Expiration Date
- If Otherwise Meet the Requirements of the Exception
- Continue on Same Terms and Conditions
- (Similar to Leases in Phase II rules)





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Stark II, Phase III – Key Changes (cont'd)

- Non-Monetary Compensation
 - “Grace” Period to Correct Excess Gifts
 - Local, Annual Medical Staff “Appreciation” Event

- Retention
 - Not Just HPSA – Now “Rural” is OK
 - Certification in Lieu of Offer is OK
 - Rural Health Clinics May Also Use this Exception



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Take Away Lessons

- It is Essential to Organize, Inventory and Track Financial Arrangements

- If There Are Any Issues, Fix Them

- Have a System Going Forward





Questions & Answers



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