

On November 16, 2015, the Department of Health and Human Services, Centers for Medicare and Medicaid Services, issued a [final rule](#) revising, clarifying and adding exceptions to the Physician Self-Referral Law (Stark) in order to (1) accommodate delivery and payment system reform; (2) reduce burdens; and (3) ensure and facilitate compliance. These changes include two new exceptions, clarifications adding additional explanations to existing policies, and revisions to existing definitions and exceptions.

Below are the top seven changes providers and physicians should note:

- 1. New "assistance to compensate a nonphysician practitioner (NPP)" exception:** Allows remuneration from a hospital, federally qualified health center or rural health clinic to a physician to recruit an NPP, where substantially all (i.e., 75%) of the services furnished by the NPP to the patients of the physician's practice are for primary care services or mental health care services. Please note this exception applies to the following NPPs: (1) physician assistants; (2) nurse practitioners; (3) clinical nurse specialists; (4) certified nurse midwives; (5) clinical social workers; and (6) clinical psychologists.
- 2. New "timeshare arrangements" exception:** This exception covers "use" arrangements only, which includes the use of premises, equipment (excluding advanced imaging equipment, radiation therapy equipment and (most) clinical or pathology laboratory equipment), personnel, items, supplies or services. Traditional office space leases and arrangements conveying a possessory leasehold interest in office space are not covered under this exception. Compensation for such arrangements must be carefully structured, as percentage compensation and per-unit services fees (i.e., "per-use" and "per-patient" rates) are prohibited but hourly or half day rates are acceptable.
- 3. Clarification on the writing requirement:** Exceptions containing a writing requirement for certain compensation arrangements use "arrangement" and "agreement" interchangeably. The rule now clarifies that this requirement only requires an arrangement be set out in writing. Although CMS recommends having one signed written contract that satisfies every requirement of the exception, the preamble clarifies that this requirement may also be satisfied through a collection of documents that relate to one another and to the exact arrangement.
- 4. Clarification on the one-year term requirement for office space rental, equipment rental and personal service arrangements exceptions:** The final rule clarifies the arrangement itself must have a duration of at least one year, but a formal "term" provision in a contract is not required. Instead, the duration requirement can be shown through contemporaneous documents establishing the arrangement lasted for at least one year. However, if the arrangement was terminated during the first year, the parties must be able to show they did not enter into a new arrangement for the same space, equipment or services during the first year.
- 5. Clarification regarding "split bill" arrangements:** "Split bill" arrangements do not involve remuneration between physicians and designated health services (DHS) entities, for items or services such as examination rooms, nursing personnel and supplies, "because the physician and DHS entity do not provide items, services or other benefits to one another." 80 Fed. Reg. 70,886, 71,321 (Nov. 16, 2015). However, outpatient departments billing a payor in one single bill will establish a compensation arrangement and must fit under an exception.
- 6. Revision to "temporary noncompliance with signature" requirement:** Prior to this final rule, parties who inadvertently failed to comply with the signature requirement had 90 days to comply and others had 30 days. Now, there is a blanket 90-day period to comply with this requirement, regardless of whether the failure to obtain a signature was inadvertent or not.
- 7. Indefinite holdover provisions:** Expired arrangements under the office space and equipment rental exceptions and the personal service arrangements exception can be "heldover" indefinitely rather than for only six months, provided the arrangement: (1) satisfies all the requirements at the time of expiration; (2) continues on the same terms and conditions; and (3) continues to satisfy all of the requirements during the holdover. Current arrangements in a valid holdover under the current six-month holdover provisions on January 1, 2016 may qualify for an indefinite holdover.

To discuss these seven points further, contact one of our attorneys listed.

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