

Under Health Care Reform Legislation, Stark Law Whole Hospital and Rural Provider Exceptions are Changing



(October 22, 2010): It's not exactly breaking news to anyone in the hospital industry that the U.S. Congress and the regulators at the Center for Medicare and Medicaid Services seem bent on preventing or eliminating physician referrals to hospitals in which they invest. With the passage of health reform legislation in March of this year, Congress approved yet another round of sweeping measures designed to eliminate or prevent the growth of physician investment in hospitals to which they refer by drastically changing both the rural provider and whole hospital ownership exceptions to the Stark Law. Here are a few key points to be aware of if you invest or work in a physician-owned hospital and you rely on the Stark Law rural provider or whole hospital exceptions to protect physician-investor referrals to the facility:

1. No new physician-owned hospitals after December 31, 2010 - *The new law imposes a total moratorium on Medicare certification of new physician-owned hospitals that would rely on either of these exceptions to protect investor referrals unless they have a provider agreement in place as of December 31, 2010.*

2. Cap on Total Physician Ownership Percentage - *Health reform legislation capped total physician investment in existing Medicare-certified facilities at whatever total percentage physician ownership a facility had on March 23, 2010, the date the law was passed. Physician owners can still buy and sell their interests, but total physician ownership may not exceed the capped amount. If your physician investors have increased their total ownership percentage since March 23, 2010, they will have 18 months from that date to take action to comply with the new law.*

3. No Bed Increases Without An Exception from CMS - *The legislation also froze the number of beds a physician owned, Medicare-certified hospital may have unless it is granted an exception by CMS to increase its capacity. The new law defines the basic criteria for an exception, but CMS has until December 31, 2012 to promulgate regulations implementing the exception process. You may not put new beds into service and continue to have physician investors refer to your facility until your hospital has been granted an exception.*

4. New Disclosure and Reporting Requirements - *There were a host of new disclosure and reporting requirements added by the legislation, including mandatory disclosures to patients referred or treated by an investor, public disclosures on hospital websites and in public advertising about physician ownership, and an annual report to the Secretary of the Dept. of Health & Human Services that identifies all physician and non-physician owners or investors in a hospital, as well as the nature and extent of their ownership and investment interests. Also, the law includes a mandate for the Secretary of HHS to post on its website all investment information reported pursuant to these new requirements.*

5. New Patient Safety Requirements - *Finally, there are new patient safety requirements that mandate a disclosure to, and written acknowledgement from, all patients regarding whether a physician is available on-site, 24-hours a day, as well as a requirement that the hospital provide assessment and initial treatment for all patients and the capacity to refer and transfer patients to hospitals with the capability to treat the needs of each patient that can't be appropriately treated on-site.*

CMS recently proposed regulations implementing most of the above described legislative changes.

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