



CMS proposes new Stark Law exception for limited remuneration to a physician

December 2, 2019

On October 9, 2019, the Centers for Medicare and Medicare Services (CMS) released [proposed changes](#) to the regulations interpreting the Physician Self-Referral Law ([Stark Law](#)), including a new proposed exception for limited remuneration to a physician.

CMS desires to create an exception to offer protection for certain non-abusive arrangements that cannot satisfy existing Stark Law exceptions due to reasons including the dollar limit, documentation, signature and/or the “set in advance” requirement in current existing exceptions.

The following conditions must be satisfied to receive protection under the proposed new exception:

- The arrangement is for items or services actually provided by the physician;
- The amount of remuneration to the physician does not exceed an aggregate of \$3,500 per calendar year. This limit would be adjusted for inflation in the same manner as the annual limit on nonmonetary compensation and the per-instance limit on medical staff incidental benefits in those Stark exceptions;
- The arrangement is commercially reasonable;
- The remuneration is not determined in any manner that takes into account the volume or value of referrals or other business generated by the physician; and
- The remuneration does not exceed the fair market value for the items or services.

Arrangements that satisfy these conditions are, in CMS' view, unlikely to cause overutilization or similar harms to the Medicare program, even in the absence of documentation regarding the arrangement and when the amount of or formula for calculating the remuneration is not set in advance of the provision of items or services.

Noteworthy aspects of the new proposed limited remuneration exception include:

- The proposed exception contains prohibitions on percentage-based and per unit of service compensation, similar to those found in existing Stark exceptions for space and equipment leases and timeshare arrangements.
- In certain circumstances, the proposed exception could be used in conjunction with other Stark Law exceptions to protect an arrangement during the course of a calendar year.
- In determining whether payment to a physician under the proposed exception exceeds the annual limit, compensation to a physician protected under another Stark exception would not count.

While CMS views the \$3,500 annual limit as sufficient to cover the typical range of commercially reasonable arrangements for the provision of items and services that a physician might provide to an entity on an infrequent or short-term basis, it is still seeking public comment on whether that amount is too high or too low.

[Public comments](#) on the proposed changes to the regulations interpreting the Stark Law are due December 31, 2019. As a result, the CMS will not finalize the proposed changes until 2020.

This publication is part of a series of updates regarding CMS and OIG's proposed fraud and abuse law changes. Bricker & Eckler's health care attorneys will continue to publish analyses of the proposed rules.

Authors
