

Re: Impact of Stark II Regulations Upon Your Medical Practice

Dear Doctor:

By now, you are likely aware that new regulations promulgated pursuant to the federal anti-self-referral law (Stark II) are on the horizon and stand to alter the way many physicians make referrals from their practices. Stark II prohibits physicians from referring Medicare/Medicaid patients for certain designated health services to entities in which they have a financial interest.

The new regulations are scheduled to take effect in January, 2002. In theory, the regulations could be revised before January, but no substantive changes are anticipated. As such, it is both prudent and timely to examine your current practices and, if necessary, take steps to bring them into compliance with the terms of the new regulations. Please note that arrangements that were adapted to the original Stark regulations may still need to be modified to comply with the new regulations.

Brief Highlights of the Stark II Regulations

Expansion/Clarification of the Definition of “Group Practice”

The definition of a group practice is relevant to the application of certain exceptions to the self-referral prohibition, such as the in-office ancillary services exception. The new regulations provide some clarity. A group practice is a physician practice that meets the following, among other, criteria: 1) single legal entity (may not be owned in whole or in part by another medical practice and may not be a loose affiliation of physicians, such as separate group practices under common ownership or control through a physician practice management company); 2) at least two physicians who qualify as *members of the group* (a defined term under the regulations); 3) each physician who is a member of the group must provide substantially the full range of patient care that the physician routinely furnishes.

The In-Office Ancillary Services Exception

This exception allows physicians to refer patients for DHS within their own practices, provided that certain location, supervision, and billing requirements are met. The final rule broadens the interpretation of the exception in several ways, including:

Modification of the Supervision Requirement

The final rule modifies the “direct supervision” requirement to conform it to Medicare payment and coverage rules. It also allows independent contractors to provide the requisite supervision, provided that they treat group practice patients on group premises and have reassigned their claims to the group.

Modification of the Building Requirement

The final rule allows a group to provide ancillary services in a separate building, as long as it is a centralized building where all the group’s ancillary services are performed and provided that it is not a part-time, intermittent arrangement that is functionally nothing more than a “shared” facility (a

facility shared by separate physician practices). This will likely have a significant impact on many current arrangements.

Conclusion

The clarifications offered by the new regulations should make compliance with Stark II less of a guessing game. However, some of the changes may require restructuring current business arrangements. As the implementation date approaches, we encourage you to examine your current business relationships and consider what changes might be desirable or necessary to bring them into compliance with the new law. If we can assist you with Stark compliance or in any other capacity, please do not hesitate to contact our office.