

Part B Insider (Multispecialty) Coding Alert

COMPLIANCE: Flat Fees, Fair-Market Payments Won't Get You In Hot Water

Learn to navigate 4 tricky Stark law exceptions

Nobody ever accused the Stark law of stark simplicity.

That law, named for Rep. **Fortney "Pete" Stark** (D-CA), says doctors can't refer patients to anyone with whom they have financial relationships, including hospitals. There are a whole bunch of exceptions to the rule, but they're headache-inducingly complicated. Luckily, a few of the exceptions have become simpler recently, including:

1. Indirect compensation relationships. Instead of the doctor making a deal with a hospital directly, the doctor makes a deal through a third party, like a medical group. That way, the doctor doesn't have a financial incentive to refer more services to the hospital.

Benefit: In this case, you don't have to follow all the rules for direct payments from a hospital to a physician, explains **Bruce Johnson**, an attorney with **Faegre & Benson** in Denver, CO. If the hospital pays a flat fee to a medical group, such as \$10,000 for medical director services, then you may not even need the exception. Further, an indirect compensation agreement can include per-click or per-hour payments and still fit into the exception, says **Gadi Weinreich**, an attorney with **Sonnenschein Nath & Rosenthal** in Washington.

The bad news: The test for the indirect compensation exception is tough. There must be an agreement in writing, payments can't vary according to referrals, and the agreement can't violate the anti-kickback law. That last requirement is the trickiest, because it drags in a whole other law, with a stringent set of tests set by the **HHS Office of Inspector General**.

Careful: You can't use the indirect compensation exception for "indirect ownership" situations, where there's an "unbroken chain" of financial relationships from a physician to a hospital or other entity, says **Thomas Bartrum**, an attorney with **Waller Lansden Dortch & Davis** in Nashville. Indirect-ownership arrangements can fit into any Stark exception that governs direct financial relationships, he adds.

2. The isolated transaction exception governs a single deal, such as the sale of real estate or equipment, explains Johnson.

All's Fair Market In Hourly Rates And Salaries

3. You can charge a hospital for items or services as long as you charge **fair market value**--but that can be tricky to figure out.

You could hire a third party to value your services, but that would be expensive. Instead, the **Centers for Medicare & Medicaid Services** says you can take the median of four different surveys to set your hourly rate, according to Johnson. Some people have applied the "average of four surveys" method to salaries as well.

This fair-market value exception has become more useful, because CMS said that you can rent an MRI machine to a hospital and the hospital can pay on a "per-click" basis, as long as the hospital paid "fair market value" for the use of the machine, according to **David Glaser**, an attorney with **Frederickson & Byron** in Minneapolis, MN.

4. The Stark law used to allow a lot of wriggle room for **financial relationships that are unrelated to Designated Health Services**--but CMS took most of it away in the final rule. You can no longer use this exception for medical director services, because CMS says those are related to DHS, for example, says Weinreich.