

## Part B Insider (Multispecialty) Coding Alert

### STARK LAW: Rural Hospitals Can Pay Some Of Your Office's Expenses When You Recruit

#### CMS closes another loophole for joint ventures

**Good news:** Your doctors may not have to rush to renew their medical director contracts when they lapse, thanks to a new regulation.

The **Centers for Medicare & Medicaid Services** (CMS) released its -Phase III- regulations on the Stark self-referral law on Aug. 27. After the harsh restrictions CMS proposed in the 2008 physician fee schedule providers were braced for more hard-line changes. But instead, CMS chose to loosen some restrictions in this rule, which is separate from the fee-schedule changes.

Here's what you need to know.

**Contracts:** Starting Dec. 4, your doctors will have a six-month -grace period- after their personal services contracts lapse. They won't face compliance nightmares if it takes them a little longer to renew.

**The catch:** -There should be a lapse in time from the signing of the contract- to the first referral to the hospital or other provider, cautions attorney **Elizabeth Zink-Pearson** of **Pearson & Bernard** in Covington, KY.

**Pay hike:** Your doctor could see a pay increase for medical director services, say attorneys. Until now, CMS has required hospitals and other providers to pay medical directors based on a controversial formula that used outdated surveys. But now, providers decide on their own how much to pay medical directors, and this could mean more money for doctors.

**Downside:** The feds could be more likely to question the formula providers use to calculate your doctor's pay, says Pearson.

**Party time:** Hospitals can host one -staff appreciation event- per year for their staff and physicians. The cost of the party doesn't have to count as part of the hospital's compensation to the doctors, according to an analysis of the Phase III regulations published online by attorneys **Nora Liggett** and **Michelle Marsh** at **Waller Lansden Dortch & Davis**. But any gifts at the party have to fit within the \$329 annual limit on gifts to doctors.

**Recruitment and retention:** CMS also allowed hospitals more flexibility in recruiting doctors. Rural hospitals can recruit doctors in a larger geographic area than before. And hospitals can pay more types of office costs for a practice that hires a new doctor to replace one who died or left within the last 12 months. Also, hospitals can pay a retention bonus to a doctor who received either an employment offer or a written recruitment offer, say Liggett and Marsh.

**Warning:** The biggest problem in the new regulations is a provision that would force doctors to -stand in the shoes- of some affiliates. Currently, if your doctors invested in a joint venture, then Medicare views these payments as going to the joint venture, not directly to the physicians.

But starting in December, Medi-care will act as if the payments were going straight to the doctors, according to attorney **David Glaser** with **Fredrickson & Byron** in Minneapolis. Especially if Medicare goes ahead with plans to ban -per-click- reimbursement for imaging scans, this could prevent imaging joint ventures from claiming that they're separate from their physician owners.



**Bottom line:** The long-awaited Stark rule is mostly good news, but not Earth shattering. The real 800-pound gorilla is still the Stark changes in the fee schedule.

To read the rule, go to [www.cms.hhs.gov/PhysicianSelfReferral/04a\\_regphase3.asp](http://www.cms.hhs.gov/PhysicianSelfReferral/04a_regphase3.asp).