

Stark Regulatory Changes Effective January 1, 2022 Require Modifying Certain Group Practice Compensation Methodologies

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On January 1, 2022, changes to the federal physician self-referral law (“Stark Law” or “Stark”) group practice definition special compensation rule go into effect. Among other things, these changes revise the rule related to overall profits to prohibit pooling and distributing profits from designated health services (“DHS”) on a service-by-service basis, which is sometimes referred to as “split pooling.” As of that date, profits from *all* the DHS of the practice, or a component of the practice that consists of at least five physicians (a “5+ physician pod”), must be aggregated before distribution. Group practices that use split pooling need to modify their compensation methodologies to account for this change by January 1. *Because of the time and effort involved in modifying physician compensation methodologies, now is the time for physician practices to evaluate whether any modifications to their compensation methodologies are needed in order to comply with this change.*

Physician practices also need to be aware of important commentary from the Centers for Medicare & Medicaid Services (“CMS”) on the special rule that clarifies CMS’s intentions regarding permissible DHS profit sharing and additional revisions to the regulation text that impact profit sharing, which may also necessitate (or, in some cases, permit) changes to certain group practice compensation methodologies.

These changes and commentary, which are described in detail below, are part of a sweeping set of final rules issued last fall by CMS to revise the Stark regulations, which were part of the “Regulatory Sprint to Coordinated Care” (the “Final Rules”). This white paper summarizes the Final Rules, and more information about the Regulatory Sprint can be found here. Most of the Final Rules went into effect on January 19, 2021, but changes to the group practice definition will not become effective until January 1, 2022. The revised version of the group practice definition that will be in effect as of January 1 is available here, and a redline comparing the version that is currently in effect to the revised version is available here.

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