

CMS Regulations for Stark Rural and Whole Hospital Exceptions

The current Stark Law, prohibits physicians from referring Medicare and Medicaid patients to any facility in which they have a financial interest. Rural and physician-owned hospitals receive exemption from the Stark Law through the rural and whole hospital exceptions. The enactment of the Patient Protection and Accountable Care Act (PPACA) on March 23, 2010 amended these exceptions by effectively prohibiting any new hospitals from falling into either category.¹ CMS clarified provisions centered on the PPACA legislation in the *Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2011 Payment Rates*, published on August 3, 2010.²

The new requirements under PPACA narrow the rural and whole hospital exceptions. The first proposed deadline provides that any physician-owned or rural hospitals seeking exception must verify their status through a valid provider agreement by December 31, 2010 in order to be eligible for either exception, provided that the hospital qualified for an exception prior to the PPACA's enactment, e.g. if a hospital added physician owners on March 24, 2010, they would not be eligible to apply for the exception.³ This should allow any physician ownership agreements that would have gone into effect within 2010 to be grandfathered into the current exception policy.⁴ Under the August 3rd proposed rule, the Secretary of Health and Human Services will collect and publish on the CMS website an annual list of all physician ownership information to be submitted by each hospital.⁵

Additionally, grandfathered hospitals will be limited by the number of operating rooms, procedure rooms, and licensed beds present on March 23, 2010, unless given specific approval by the Secretary of Health and Human Services. CMS has until January 1, 2012 to institute a process for hospitals to apply for approval to expand beyond their March 23rd limit, with all applications due by February 1, 2012.⁶ The PPACA also narrows the whole hospital exception by restricting the percentage of the total value of the hospital owned by the aggregate number of physicians to the ownership amount that existed on March 23, 2010.⁷

The proposed rule also establishes various disclosure requirements by mandating that physicians disclose their hospital ownership in any public advertising and to any patient referred to them. Physicians must also disclose

to patients prior to their stay, if during a 24-hour period no physicians will be on the premises, and obtain a written acknowledgement of this disclosure from the patient.⁸

CMS has indicated that all grandfathered hospitals must be in compliance with disclosure requests and limitations by September 23, 2011, and CMS has stated that enforcement would begin May 1, 2012, although no specifications have been released as to the procedure to maintain compliance from hospitals.⁹ Critics remain skeptical as to whether these disclosures will change patients' choice in providers, or whether restrictions on the whole hospital and rural exceptions to Stark Law will reduce the government's deficit.¹⁰ Comments on the proposed rule are due to CMS by August 31, 2010.¹¹

¹ "CMS Clears up Stark Deadline Confusion and Proposes Implementing Regulations for Whole Hospital and Rural Provider Stark Exceptions" By Julie E. Kass and Kristen Cilent Carter, Ober Kaler, <http://www.lexology.com/library/detail.aspx?g=7ed294a1-141a-4720-8da3-d9042a0d8ce1> (Accessed 8/18/10).

² "Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2011 Payment Rates" 42 CFR Vol. 75, No. 148 (August 3, 2010).

³ "Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2011 Payment Rates" 42 CFR Vol. 75, No. 148 (August 3, 2010), p.46432

⁴ "CMS Sets Dec. 31 Deadline for Whole, Rural Hospital Exceptions to Stark Law" By James Swann, BNA Health Law Reporter, 19 HLR 1019, July 22, 2010.

⁵ "Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2011 Payment Rates" 42 CFR Vol. 75, No. 148 (August 3, 2010), p.46432, 46433, 46434.

⁶ "Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2011 Payment Rates" 42 CFR Vol. 75, No. 148 (August 3, 2010), p.46433

⁷ "Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2011 Payment Rates" 42 CFR Vol. 75, No. 148 (August 3, 2010), p.46434

⁸ "Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2011 Payment Rates" 42 CFR Vol. 75, No. 148 (August 3, 2010), p.46435.

⁹ "Proposed Changes to the Hospital Outpatient Prospective Payment System and CY 2011 Payment Rates" 42 CFR Vol. 75, No. 148 (August 3, 2010), p.46432, 46435; "CMS Sets Dec. 31 Deadline for Whole, Rural Hospital Exceptions to Stark Law" By James Swann, BNA Health Law Reporter, 19 HLR 1019, July 22, 2010.

¹⁰ "CMS Sets Dec. 31 Deadline for Whole, Rural Hospital Exceptions to Stark Law" By James Swann, BNA Health Law Reporter, 19 HLR 1019, July 22, 2010.

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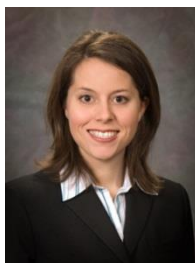
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