

Under Arrangement Per Click & Block Leases

Certain physician - hospital relationships referred to as "under arrangements" and "per click" leasing ventures have come under increasing regulatory scrutiny. An under arrangements transaction occurs when the hospital contracts with a third party (typically a joint venture owned, at least in part, by physicians who may refer) to provide a hospital service, and the hospital then bills and is reimbursed by Medicare for those services and pays the supplier, or joint venture.

Under per-click or block leasing arrangements, hospitals lease equipment and facilities to a physician group for specific time blocks, or share space and equipment with other lessees.¹ The physicians using the facility pays a small lease fee, and then the physician bills the payor as if the physician provided the services, keeping the monetary difference between the lease payment and insurance reimbursement. Through the arrangement, the technical fee that used to be paid solely to the imaging center is now being shared with the referring physicians.²

Currently, this type of "arrangement" is permitted under Stark as the "entity" to which the physicians refer patients is the hospital, not the joint venture, i.e., the "entity" is deemed to be the entity that submits the reimbursement claim to Medicare.³ However, buried in the July 2, 2007, 2008 Medicare Physician Fee Schedule proposed rule, CMS has included revisions to the Stark regulations which would prohibit space and equipment lease arrangements where per-click payments are made to a physician lessor who refers patients to the lessee.⁴

Specifically, CMS has proposed to broaden the definition of "entity" to include the person or entity that performs the designated health services. Of note, CMS has criticized certain types of these arrangements as "inherently susceptible to abuse because the physician lessor has an incentive to profit from referring a higher volume of patients to the lessee." The public comment period expired on August 31, 2007, however the final rule has not yet been released. While the proposed Stark provisions contained in the 2008 Physician Fee Schedule proposed rule do *not* appear to currently apply to arrangements where the physician is the lessee and rents space from a hospital or other entity on a per-click basis, CMS is considering whether or not to prohibit these arrangements as well.

¹ "Outpatient Imaging Centers: Building Blocks for Survival," By Tor Valenza, Imaging Economics, April 2007; "Accreditation Ensures Quality, Guarantees Payment," By Dana Hinesly, Imaging Economics, March 2007.

² "Assault on Lease Deals Could Bring Their Demise," Anne M. Haule, Diagnostic Imaging, April 2007, p. 1.

³ "Potential Impact of 2008 Medicare Physician Fee Schedule Proposed Rules on Imaging Arrangements," By Thomas W. Greeson and Health M. Zimmerman, Reed Smith LLP, Health Lawyers Weekly, available at

http://www.reedsmith.com/_db/_documents/Potential_Impact_of_2008_Medicare_Physician_Fee_Schedule.pdf (Accessed 9/25/07).

⁴ "Potential Impact of 2008 Medicare Physician Fee Schedule Proposed Rules on Imaging Arrangements," By Thomas W. Greeson and Health M. Zimmerman, Reed Smith LLP, Health Lawyers Weekly, available at

http://www.reedsmith.com/_db/_documents/Potential_Impact_of_2008_Medicare_Physician_Fee_Schedule.pdf (Accessed 9/25/07).

⁵ "Advisory Opinion No. 07-10," Office of Inspector General, Department of Health and Human Services, September 27, 2007, p. 1-12.



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Robert James Cimasi, MHA, ASA, FRICS, MCBA, AVA, CM&AA, serves as President of **HEALTH CAPITAL CONSULTANTS (HCC)**, a nationally recognized healthcare financial and economic consulting firm headquartered in St. Louis, MO, serving clients in 49 states since 1993. Mr. Cimasi has over thirty years of experience in serving clients, with a professional focus on the financial and economic aspects of healthcare service sector entities including: valuation consulting and capital formation services; healthcare industry transactions including joint ventures, mergers, acquisitions, and divestitures; litigation support & expert testimony; and, certificate-of-need and other regulatory and policy planning consulting.

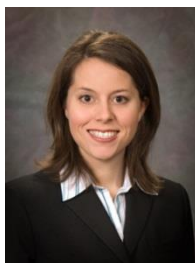
Mr. Cimasi holds a Masters in Health Administration from the University of Maryland, as well as several professional designations: Accredited Senior Appraiser (ASA – American Society of Appraisers); Fellow Royal Intuition of Chartered Surveyors (FRICS – Royal Institute of Chartered Surveyors); Master Certified Business Appraiser (MCBA – Institute of Business Appraisers); Accredited Valuation Analyst (AVA – National Association of Certified Valuators and Analysts); and, Certified Merger & Acquisition Advisor (CM&AA – Alliance of Merger & Acquisition Advisors). He has served as an expert witness on cases in numerous courts, and has provided testimony before federal and state legislative committees. He is a nationally known speaker on healthcare industry topics, the author of several books, the latest of which include: *“The U.S. Healthcare Certificate of Need Sourcebook”* [2005 - Beard Books], *“An Exciting Insight into the Healthcare Industry and Medical Practice Valuation”* [2002 – AICPA], and *“A Guide to Consulting Services for Emerging Healthcare Organizations”* [1999 John Wiley and Sons].

Mr. Cimasi is the author of numerous additional chapters in anthologies; books, and legal treatises; published articles in peer reviewed and industry trade journals; research papers and case studies; and, is often quoted by healthcare industry press. In 2006, Mr. Cimasi was honored with the prestigious *“Shannon Pratt Award in Business Valuation”* conferred by the Institute of Business Appraisers. Mr. Cimasi serves on the Editorial Board of the Business Appraisals Practice of the Institute of Business Appraisers, of which he is a member of the College of Fellows.



Todd A. Zigrang, MBA, MHA, ASA, FACHE, is the Senior Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where he focuses on the areas valuation and financial analysis for hospitals and other healthcare enterprises. Mr. Zigrang has significant physician integration and financial analysis experience, and has participated in the development of a physician-owned multi-specialty MSO and networks involving a wide range of specialties; physician-owned hospitals, as well as several limited liability companies for the purpose of acquiring acute care and specialty hospitals, ASCs and other ancillary facilities; participated in the evaluation and negotiation of managed care contracts, performed and assisted in the valuation of various healthcare entities and related litigation support engagements; created pro-forma financials; written business plans; conducted a range of industry research; completed due diligence practice analysis; overseen the selection process for vendors, contractors, and architects; and, worked on the arrangement of financing.

Mr. Zigrang holds a Master of Science in Health Administration and a Masters in Business Administration from the University of Missouri at Columbia, and is a Fellow of the American College of Healthcare Executives. He has co-authored *“Research and Financial Benchmarking in the Healthcare Industry”* (STP Financial Management) and *“Healthcare Industry Research and its Application in Financial Consulting”* (Aspen Publishers). He has additionally taught before the Institute of Business Appraisers and CPA Leadership Institute, and has presented healthcare industry valuation related research papers before the Healthcare Financial Management Association; the National CPA Health Care Adviser's Association; Association for Corporate Growth; Infocast Executive Education Series; the St. Louis Business Valuation Roundtable; and, Physician Hospitals of America.



Anne P. Sharamitaro, Esq., is the Vice President of **HEALTH CAPITAL CONSULTANTS (HCC)**, where she focuses on the areas of Certificate of Need (CON); regulatory compliance, managed care, and antitrust consulting. Ms. Sharamitaro is a member of the Missouri Bar and holds a J.D. and Health Law Certificate from Saint Louis University School of Law, where she served as an editor for the *Journal of Health Law*, published by the American Health Lawyers Association. She has presented healthcare industry related research papers before Physician Hospitals of America and the National Association of Certified Valuation Analysts and co-authored chapters in *“Healthcare Organizations: Financial Management Strategies,”* published in 2008.