

HEALTHCARE**NEW STARK LAW EXCEPTION ALLOWS HOSPITALS, FQHCs AND RHCs TO ASSIST PHYSICIANS WITH ENGAGING NON-PHYSICIAN PRACTITIONERS**

by Rose Willis

The Centers for Medicare & Medicaid Services (CMS) recently released a new exception to the Physician Self-Referral Law (the "Stark Law") intended to expand access to primary care and mental health services (the "NPP Recruitment Exception"). This exception would permit hospitals, federally qualified health centers (FQHCs) and rural health clinics (RHCs) to give financial assistance to a physician (or physician practice) to engage a non-physician practitioner (NPP) to provide primary care services at their practice, if it meets all factors to the exception. Without the NPP Recruitment Exception, if the financial assistance is provided to a physician that refers designated health services (such as inpatient/outpatient hospital services, lab services, imaging services) to the entity providing assistance, the arrangement would violate the Stark Law.

Under the NPP Recruitment Exception, for example, a hospital may provide a certain level of financial assistance to a local physician practice that employs or contracts with a physician assistant to provide primary care or mental health services to patients of the practice. To qualify for the exception, these arrangements must meet all factors of the NPP Recruitment Exception including the following:

- **Type of Permitted Arrangement.** To fulfill the requirements of the exception, the NPP must become either (1) a bona fide employee of the physician or practice, or (2) an independent contractor of the physician or practice as long as the independent contractor arrangement is directly between the NPP and the physician (or practice).
- **Eligible NPP.** For purposes of this exception, the NPP includes only physician assistants, nurse practitioners, clinical nurse specialists and certified nurse midwives. Also NPPs may not have, within the one year prior to providing assistance, (1) practiced in the "geographic area served by the hospital, FQHC or RHC"; and (2) been employed or otherwise engaged to provide patient care services by a physician practice that has a medical practice in the geographic area served by the hospital, FQHC or RHC, regardless of whether they provided services at that office. For this exception, CMS defined the "geographic area served by an FQHC or RHC" to mean the lowest number of contiguous or noncontiguous zip codes from which the FQHC or RHC draws at least 90 percent of its patients, as determined on an encounter basis. When determining this area, the FQHC or RHC is permitted to include one or more zip

codes from which the FQHC or RHC draws no patients, provided that such zip codes are entirely surrounded by zip codes in the geographic area from which the FQHC or RHC draws at least 90 percent of its patients.

- **Scope of Services.** The NPP must provide "substantially all" (meaning at least 75 percent) of his or her services to patients of the physician practice. Also, such services may only include mental health services or primary care services, defined as family practice, general internal medicine, pediatrics, geriatrics, and obstetrics and gynecology.
- **Cap on Assistance.** The amount of permitted assistance that a hospital, FQHC or RHC may provide to a physician under the exception may not exceed 50 percent of the NPP's actual aggregate compensation, signing bonus and benefits (health insurance, paid leave and other routine non-cash benefits).
- **Period for Assistance.** The exception may not be used by a hospital, FQHC or RHC to provide such assistance for a particular physician practice more than once every three years. Also, the assistance provided may not last longer than 2 years.

The NPP Recruitment Exception will be beneficial particularly to those physician practices who previously refrained from engaging NPPs to assist with primary care or mental health services due to concerns over initial financial losses. The new exception will help defray the initial costs for those physician practices and, with any luck, will help mitigate the shortage of primary care and mental health providers within our communities.

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