CMS Proposes Rule Changes to Modify Stark Requirements

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On July 8, 2015, the Centers for Medicare and Medicaid Services (CMS) issued proposed regulations revising the physician self-referral law ("Stark"). The proposed rule changes are designed to modify some of the stringent requirements of Stark and to issue new exceptions.

Some of the more significant proposed revisions are the following:

1. Establishment of a new non-physician practitioner recruitment and retention exception permitting hospitals, Federally Qualified Health Centers (FQHCs) and Rural Health Clinics (RHCs) to make payments to physicians or physician groups to assist them in employing physician assistants, nurse practitioners, clinical nurse specialists and certified nurse midwives pursuant to criteria.

2. Clarification of CMS' policy on retention payments to physicians in underserved areas, stating that a retention payment may not exceed the lower of (a) an amount equal to 25 percent (25%) of the physician's current annual income or (b) the reasonable costs the hospital would incur to recruit a new physician.

3. Clarification of the "in-writing requirement" to include a collection of documents, including contemporaneous documents evidencing the course of conduct between the parties.

4. Extending the holdover provision from six (6) months to indefinitely, provided the holdover period continues on the same terms and conditions of the original arrangement.

5. A new exception for timeshare leases.

6. The requirement that physician-owned hospitals must disclose that the hospital is partially owned by physicians on any public website does not include postings on social media websites.

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This is a brief summary of the proposed rule changes. The final rule will generally be effective as of January 1, 2016. However, the definition of "ownership or investment interest" in 42 CFR 411.362 related to physician-owned hospital, has a delayed effective date of January 1, 2017. Note that, regardless of the effective date(s), CMS views many of the Final Rule revisions as clarification of existing policy, and the changes can arguably be effectively relied upon immediately/retroactively.

For more details, please contact Bill Mabry or any other attorney in Frost Brown Todd's Health Law Practice Group.

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