

Physician-owned Hospitals Impacted by New Changes to Stark Rules

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New healthcare regulations released by CMS on November 2, 2010 have changed the Stark requirements for physician-owned hospitals. Physician-owned hospitals must comply with these regulations to continue to utilize the "whole hospital" and rural provider exceptions to Stark. The revisions to these exceptions restrict the amount of physician investment in hospitals, limit facility expansion and impose disclosure requirements for reporting ownership interests and around the clock physician staffing.

Failure to comply with the new regulations will preclude the use of the "whole hospital" and rural provider exceptions to Stark. Physicians who currently invest in hospitals or who are considering investing in a hospital will be affected by these revisions and should be aware of the new requirements.

March 23, 2010: Existing and prospective hospitals must have physician owners or investors on record as of this date, regardless of whether the hospital has a provider agreement in effect.

- A physician-owned hospital, or an entity whose assets include the hospital, may not increase the overall percentage of physician ownership or investment after March 23, 2010.
- Additional physicians may still invest in the hospital, and existing physician owners or investors may be replaced, provided the aggregate percentage of physician ownership remains the same.
- The ownership or investment interests held by non-referring physicians or physicians who no longer practice medicine are not included when calculating the overall physician ownership percentage.
- The overall percentage of physician ownership or investment in the hospital may fluctuate after March 23, 2010, so long as it never exceeds the level of ownership that existed as of that date and the overall percentage of ownership is not reduced to zero.

ABOUT US:

Kathleen L. DeBruhl & Associates, LLC is a regional healthcare law firm with a national client base which offers its physician and other healthcare provider clients sophisticated and substantial expertise on their corporate business needs including organization, joint ventures, mergers and acquisitions, and contractual and financial arrangements.

The Firm counsels and defends clients on highly complicated regulatory matters involving reimbursement, fraud and abuse, and compliance with the myriad of laws and regulations imposed upon the healthcare industry by both federal and state governments.

***December 31, 2010:
Physician-owned hospitals must
have a Medicare provider
agreement in effect.***

- Physician-owned hospitals currently in development or under construction must have a provider agreement in effect by December 31, 2010.
- The provider agreement may be issued at a later date, so long as it contains an effective date that is on or before December 31, 2010.
- If a hospital has physician owners or investors in place on March 23, 2010 but does not have a provider agreement in effect on December 31, 2010, the hospital will not qualify for the whole hospital and rural provider exceptions to Stark.

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Limitation on Facility Expansion: A physician-owned hospital may not increase the total number of operating rooms, procedure rooms, and beds for which the hospital is licensed after March 23, 2010.

- If no provider agreement is in effect as of March 23, 2010, but goes into effect on or before December 31, 2010, the limitation applies to those operating rooms, procedure rooms, and beds for which the facility is licensed as of the effective date of the provider agreement. Rooms and licensed beds must be in existence and operational as of that date.
- The limitation applies to beds licensed as of March 23, 2010, as well as to operating rooms and procedure rooms, regardless of whether those rooms are licensed by the State.
- “Procedure rooms” only include rooms in which catheterizations, angiographies, angiograms and endoscopies are performed. The term does not include rooms for the performance of pain procedures. The term does not include emergency rooms or departments, except for those rooms in an emergency department that are utilized for performing the procedures listed above. A physician-owned hospital could add an emergency room or department or other rooms to perform procedures not listed above.
- Operating rooms, procedure rooms, and licensed beds may also change purpose, provided the “baseline” number of total rooms and beds remains the same. If a hospital has 20 licensed beds, 5 operating rooms and 5 procedure rooms as of March 23, 2010, the “baseline” number would be 30. If more procedure rooms are needed, the hospital can decrease the number of licensed beds or the number of operating rooms and add more procedure rooms, so long as the total number of rooms and beds does not exceed 30. A hospital retains the ability to allocate the purpose of the rooms and beds as it sees fit, but must satisfy any State licensing requirements for additional operating rooms, procedure rooms, or beds within that number.

IMPORTANT NOTE:

The Secretary of the Department of Health and Human Services may grant an exception to a facility that wishes to expand. Regulations concerning the process for requesting an exception will be released no later than January 1, 2012.

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Disclosure of Ownership or Investment by Physicians: Referring physician owners or investors must disclose their ownership interest in a hospital to patients, in writing, beginning September 23, 2011.

Disclosure of Physician Ownership by Hospitals: Physician-owned hospitals must develop procedures for disclosure of physician ownership and investment interests.

- Patients must receive the disclosure in time to make a meaningful decision about receipt of care. Generally, disclosure should occur at the time of referral.
- A physician owner or investor is not required to make this disclosure to a patient being treated at the hospital emergency department. The disclosure should be made to the patient or the patient's representative upon admission.
- No particular method of disclosure is required so long as it is meaningful. The physician may provide a form notice to each patient, disclosing his or her ownership in the hospital and providing a list identifying the physician owners or investors in the hospital.
- A physician may display prominently a sign in his or her office containing the required disclosures. This, however, may not be meaningful for patients who are blind, cannot read, or are incapacitated. The hospital should consider procedures for disclosure in the event of a language barrier, although this is not specifically addressed in the regulations.
- The referring physician must also disclose the ownership or investment interest of the treating physician, if applicable.
- Disclosure procedures adopted by the physician-owned hospital must condition the physician's continued medical staff membership or admitting privileges on compliance with the disclosure procedures.
- The physician-owned hospital must develop procedures requiring the referring physician to disclose his or her ownership or investment interest, and that of the treating physician, if applicable, in time for the patient to make a meaningful decision concerning receipt of care.
- No disclosure is required for patients being treated in a physician-owned hospital emergency department. If a patient treated in the emergency department is admitted, the patient or the patient's representative must be notified that the hospital is physician-owned.
- The disclosure procedures must condition a referring physician's continued medical staff membership or admitting privileges on compliance with the disclosure procedures. Failure to comply with disclosure procedures should result in disciplinary action under the medical staff bylaws, but may not necessarily result in a violation of Stark.
- The physician-owned hospital must disclose to a patient, before admission, if the hospital does not have a physician on the premises during all hours the patient is receiving services from the hospital. The hospital must receive a signed statement from the patient acknowledging the patient understands a physician may not be present on the premises at all times. This acknowledgment should be included with other documents to be completed by the patient at pre-registration or admission.
- Physician ownership and investment interests must be disclosed on the hospital's public website on the home page, "about us" page, or any other page commonly visited by prospective or current patients. The disclosure should be conspicuous and consistent in size with other website text. The disclosure should include a list of physician owners or investors who actively practice at the facility.
- A disclosure of physician ownership and investment interests must also appear in any print advertising distributed by the hospital, including direct mailings, newspapers and magazines. The disclosure must be clear and conspicuous.

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*We will keep you
informed as
further regulations
implementing
important changes
in healthcare are
released.*

It is vital that both current and prospective physician-owned hospitals work to comply with these new regulations in order to make continued use of the “whole hospital” and rural provider exceptions to Stark. An advisory opinion process through CMS is available to address current or prospective arrangements where compliance with these regulations is uncertain.

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