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Lawyer: Stark Provision on Personally Performed Services Is Misunderstood

By Nina Youngstrom

It has become something close to conventional wisdom that hospitals and other providers risk violating the Stark Law unless their productivity compensation for employed physicians is based only on their personally performed services, but that's a myth—and it's skewing compensation arrangements and influencing enforcement actions and settlements, one attorney says.

"There is much confusion about whether a physician-employee may be compensated for services performed by another physician or a mid-level practitioner," says Gadi Weinreich, a senior partner with Dentons US LLP in Washington, D.C. He gets why people are confused; for one thing, the way that CMS structured Stark's exception for employment arrangements makes it seem like the provision on productivity bonuses is an independent condition of complying with the exception, he says. That may be wreaking havoc on the interpretation of the Stark Law and regulation, which is already challenging, Weinreich says.

"It's a beast of a statute," he contends. "Everyone struggles with Stark, no matter how long they've worked on it."

The Stark Law prohibits Medicare payments to entities (e.g., hospitals) for designated health services (DHS), such as inpatient and outpatient services, that are referred by physicians who have a financial relationship with the DHS entity, unless an exception applies. There's a statutory and regulatory exception for "bona fide" employment relationships, and it has taken center stage as hospitals snap up physician practices to advance health reform/value-based arrangements and for other reasons.