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New Stark Regulation May Spark Reviews of Medical Directorships

By Nina Youngstrom

Between recent changes to Stark regulations^[1] and Medicare watchdogs' long-time concern about fair market value and commercial reasonableness, hospitals may want to revisit their medical director agreements. There's a limit to how many medical director agreements are defensible and how much physicians should be paid for the administrative services they provide.

"Make sure each medical directorship serves a legitimate business purpose and there is no duplication," advises Lyle Oelrich, a principal with PYA. He recommends performing a medical director needs assessment.^[2]

In the revised Stark regulation, CMS for the first time defined commercial reasonableness, which is a pillar of many common exceptions to the Stark Law, along with fair market value. CMS says commercially reasonable means "the particular arrangement furthers a legitimate business purpose of the parties to the arrangement and is sensible, considering the characteristics of the parties, including their size, type, scope, and specialty." Also, an arrangement doesn't have to be profitable to be commercially reasonable. In the context of medical director agreements, CMS cautions that looks can be deceiving. "Arrangements that, on their face, appear to further a legitimate business purpose of the parties may not be commercially reasonable if they merely duplicate other facially legitimate arrangements (84 FR 55790)," the rule stated. "For example, a hospital may enter into an arrangement for the personal services of a physician to oversee its oncology department. If the hospital needs only one medical director for the oncology department, but later enters into a second arrangement with another physician for oversight of the department, the second arrangement merely duplicates the already-obtained medical directorship services and may not be commercially reasonable. Although the evaluation of compliance with the physician self-referral law always requires a review of the facts and circumstances of the financial relationship between the parties, the commercial reasonableness of multiple arrangements for the same services is questionable."

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