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New Stark Exception, Safe Harbor Lets Hospitals Pay for Physicians' Mental Health Care

By Nina Youngstrom

Suppose a referring physician is suffering from depression or a substance use disorder (SUD) and the hospital wants to pay for part or all of their treatment. Until recently, the hospital could have run afoul of the Stark Law and Anti-Kickback Statute (AKS) because covering the costs of mental health or SUD treatment would be considered illegal remuneration—something of value that is potentially perceived as payment for referrals.

That has changed, thanks to Sec. 4126 of the 2023 Consolidated Appropriations Act (CAA), said attorney Bob Wade, with Nelson Mullins in Nashville.^[1] The CAA created the Exception for Physician Wellness Programs, a statutory exception to the Stark Law and a safe harbor under the AKS, Wade said on his Feb. 20 “Stark Law and Compliance” podcast.^[2] At its core, the exception and safe harbor allow entities to provide assistance for physicians (in the case of Stark) as well as other medical personnel (in the case of the safe harbor) who are struggling with mental health problems and SUDs—with no dollar limit—if certain conditions are met. Because it’s a statutory exception and safe harbor, it wasn’t subject to proposed rulemaking with comments and took effect right away, Wade said.

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