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Insights

Had Enough Compliance Challenges? Don't Forget About the Stark Law's Group Practice Compensation Changes Effective January 1, 2022

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Most health care providers face many compliance challenges in today's regulatory climate with the promise of many more to come in the new year. This burden may be particularly acute for physician group practices who must change the methodology for pooling and distributing overall profits under an important, and confusing, Stark Law exception starting January 1, 2022.

The Centers for Medicare and Medicaid Services ("CMS") reformed the Stark Law in December 2020. While most of these changes took effect in January 2021, CMS delayed reforms affecting group practice distribution methodologies to January 1, 2022 to give group practices sufficient time to review and change their physician payment plans. These changes were significant as they affected the calculation and distribution of "overall profits" under the Stark Law's Group Practice and In-Office Ancillary Services exceptions. Group practices using those exceptions to calculate and distribute overall profits from Designed Health Services ("DHS") must now meet the following requirements effective January 1, 2022:

- When pooling overall profits, group practices must aggregate all DHS profits from the entire group, or they may aggregate all profits from a component of the group so long as it has at least five physicians, before sharing overall profits.
- Group practices with components of five physicians must use the same distribution methodology for each physician in a component.
- CMS no longer allows group practices to split DHS profits by ancillary service or on a service-by-service basis, i.e., split pooling.
- Group practices may choose whether to distribute, or retain, DHS profits.
- Group practices must divide overall profits and calculate productivity bonuses in a reasonable and verifiable manner that is not directly related to the volume or value of DHS referrals.

The Stark Law is a strict liability law, which means that there is no flexibility or consideration given to Medicare or Medicaid providers who violate its requirements. The Stark Law exceptions and these changes to physician compensation are detailed and complex.

If your Group Practice is not in compliance with these changes, we can help you revise your plan quickly to comply before payments are made from a non-compliant plan. Please contact **Thomas N. Hutchinson** or

Brandon W. Shirley to ensure your physician compensation methodology complies with the Stark Law and its recent changes to physician profit distributions.

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