

## Final Piece of the Stark Law Falls into Place

The final “Phase III” regulations promulgated under the federal physician self-referral prohibition known as the Stark Law became effective December 4, 2007. Several years in the making, Phase III addresses and modifies portions of larger Stark regulatory scheme, namely Phases I and II, which took effect in 2002 and 2004. Stark prohibits a physician from referring Medicare patients for certain designated health services (DHS) to an entity with whom the referring physician or a member of the referring physician’s family has a financial relationship, and prohibits billing for the same, absent one of a number of complex exceptions. The highlights of Phase III include the following:

- The Physician “Stands in the Shoes” of the Practice: Phase III stands a physician in the shoes of his or her group practice so that the physician will be deemed to have a direct compensation arrangement with a DHS entity that contracts with the group. Absent an applicable exception, many arrangements that would not have violated Stark prior to Phase III will now be illegal. Fortunately, Stark III does grandfather arrangements that were in place on September 5, 2007, and in compliance with the requirements of the Stark indirect compensation exception, for the original or renewal term of the arrangements. After that, such arrangements will need to be restructured to comply with a direct compensation exception.

- Groups and Independent Contractor Physicians: Phase III requires that for an independent contractor physician to qualify as a “physician in the group practice,” the group must contract with the individual physician rather than another entity such as another practice group. This is important for a practice that contracts with other physicians to provide ancillary or physician services and must therefore meet the ancillary services or physician services exception, which require that the contracted physician meet the definition of “in the group.”

- Physician Recruitment Exception: Phase III liberalizes the physician recruitment exception to Stark, which was designed to allow remuneration by a hospital to induce a physician to relocate to the area served by the hospital. These changes will be of particular importance to rural hospitals and to physicians considering practicing in rural communities. Phase III also liberalizes the exception for retention payments in underserved areas, and allows rural health clinics to make retention payments.