



EXCEPTIONS FOR NONABUSIVE BUSINESS PRACTICE: LIMITED REMUNERATION TO A PHYSICIAN

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As described in a broad prior client advisory found [here](#), the Centers for Medicare and Medicaid Services (CMS) published final regulations on November 20, 2020, that make significant modifications to the federal physician self-referral law frequently known as the Stark law. Among the modifications set forth in the final regulations are new exceptions to provide flexibility for nonabusive business practices, including an exception for arrangements involving limited remuneration to a physician.

This new exception permits limited remuneration (up to an aggregate of \$5,000 per calendar year, as adjusted for inflation) to a physician for items or services actually provided by the physician. The compensation must not be determined in any manner that takes into account the volume or value of referrals or other business generated by the physician, must not exceed the fair market value of the items or services provided, and must be commercially reasonable even if no referrals were made between the parties. Similar to other compensation arrangements there are additional limitations to the structure of compensation for leasing arrangements and other conditions if the arrangement requires directed referrals. The exception is not applicable to payments to a physician's immediate family member for items or services provided by the family member, but a physician may provide items or services through employees whom the physician has hired for the purpose of performing the services, through a wholly-owned entity, or through *locum tenens* physicians.

The catalyst for this exception arose from CMS's review of numerous arrangements for limited remuneration paid to a physician that were disclosed through the Self-Referral Disclosure Protocol because they did not satisfy the technical requirements of an applicable exception, but which such arrangements CMS deemed nonabusive. The exception seeks to reduce the burden of compliance, and where the elements of the exception are met, CMS does not believe that the provision of limited remuneration to a physician poses risk of program or patient abuse, even in the absence of documentation regarding the arrangement and where the amount of or a formula for calculating the remuneration is not set in advance of the provision of items or services.

The exception may be used in conjunction with other exceptions to protect an arrangement during the course of a calendar year, including the personal service arrangements at §411.357(d)(1) and the exception for fair market value compensation at §411.357(l). The ability to "bundle" the limited remuneration to a Physician exception with other exceptions provides additional flexibility to providers to comply with the Stark law.

Hancock Daniel's [Fraud & Abuse](#) team can help with questions about utilizing this new exception with your compensation arrangements with physicians.

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