

January 14, 2009

House Passes Bill to Amend Stark Law Exception Regarding Physician Ownership of Hospitals

On January 14, 2009, the United States House of Representatives passed a Bill, H.R. 2, which includes provisions to amend the Stark law exception that currently allows physician ownership of hospitals. The proposed amendment would apply whether the hospital is located in a rural or urban area. In accordance with the proposed amendment, physician ownership of a hospital would be allowed only if the current requirements of the Stark law exception were satisfied in addition to the following new requirements:

- The hospital had physician ownership on January 1, 2009 and a provider agreement under Section 1866 in effect on such date.
- The percentage of the total value of the ownership or investment interests held in the hospital, or in an entity whose assets include the hospital, by physician owners or investors in the aggregate does not exceed the percentage in effect as of the date of enactment of the new law.
- The number of operating rooms, procedure rooms (includes rooms in which catheterizations, angiographies, angiograms and endoscopies are performed, but does not include emergency rooms or departments), and beds of the hospital may not increase at any time on or after the date of enactment of the new law.
 - There is a provision allowing the Secretary to put a process in place to apply for exceptions to the prohibition on expansion.
 - This exception process would only be available for hospitals (i) located in high growth counties and in States in which the average bed capacity is less than the national average bed capacity; (ii) that have high Medicaid inpatient admissions; and (iii) that have an average bed occupancy rate that is greater than the average bed occupancy rate in the State.
 - Any expansion permitted by an exception may only occur in facilities on the *main campus* of the hospital.
- The hospital must annually disclose ownership information to the Secretary.
- The hospital must have procedures in place for referring physicians to disclose ownership information to patients.

- The hospital may not condition any physician ownership or investment interest directly or indirectly on the physician owner or investor making or influencing referrals to the hospital or otherwise generating business for the hospital.
- The hospital must disclose physician ownership on its website and in any public advertising.
- The exception includes requirements to ensure “bona fide” investment by physicians that are similar to requirements included in the safe harbors to the Anti-Kickback Statute:
 - Ownership terms offered to physicians must not be more favorable than terms offered to a non-physician;
 - The hospital (or any investors in the hospital) do not directly or indirectly provide loans or financing for any physician owner or investor in the hospital;
 - The hospital (or any investors in the hospital) do not directly or indirectly or guarantee a loan, make a payment toward a loan, or otherwise subsidize a loan for any physician that is related to acquiring any ownership or investment interest in the hospital;
 - Ownership or investment returns are distributed to owners in proportion to their ownership interests;
 - Physician owners do not receive, directly or indirectly, any guaranteed receipt of or right to purchase other business interests related to the hospital, including the purchase or lease of any property under the control of other owners in the hospital or located near the premises of the hospital;
 - The hospital does not offer a physician owner or investor the opportunity to purchase or lease any property under the control of the hospital or any other owner in the hospital on more favorable terms than the terms offered to an individual who is not a physician owner.
- The hospital has the capacity to provide assessment and initial treatment for patients and refer and transfer patients to hospitals with the capability to treat the needs of the patient involved. If the hospital admits a patient and does not have any physician available on the premises to provide services during all hours, the hospital must disclose this fact to the patient and receive a signed acknowledgement from the patient before admitting the patient.
- The hospital was not converted from an ambulatory surgical center to a hospital on or after the date of enactment of the new law.

Additional Information

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For more information regarding the Stark law exception or how your organization should proceed in regard to this new bill in the U.S. House, or if you have questions regarding this Alert, please feel free to contact any of the following, or your regular Kutak Rock LLP contact or any member of our Health Care Practice group:

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