



## ***COMPLIANCE ALERT 10-5***

### ***Stark Implications and Referrals for Physicians***

Stark Law prohibits a physician from making a referral to an entity for the furnishing of designated health services if the physician has a financial relationship with the entity, unless an exception applies. One of the exceptions allowed under Stark is a personal services agreement. HHSC relies heavily on this exception, with all its caveats, for its contracts for healthcare services with physicians. Another Stark exception used extensively by HHSC is when a bona fide employment arrangement exists between an entity and the physician.

Previous Stark rules disallowed any restriction on a physician's referrals. Previously, HHSC could not require that a physician refer only to a HHSC facility. However, current Stark law does allow the restricting of referrals or mandatory referrals with certain conditions.

The direct citation that allows the requiring of referrals by a physician is:

**42 CFR § 411.354 (c)** (4) A physician's compensation from a bona fide employer or under a managed care contract or other contract for personal services may be conditioned on the physician's referrals to a particular provider, practitioner, or supplier, provided that the compensation arrangement meets all of the following conditions. The compensation arrangement:

- (i) Is set in advance for the term of the agreement.
- (ii) Is consistent with fair market value for services performed (that is, the payment does not take into account the volume or value of anticipated or required referrals).
- (iii) Otherwise complies with an applicable exception under § 411.355 or § 411.357.
- (iv) Complies with both of the following conditions:
  - (A) The requirement to make referrals to a particular provider, practitioner, or supplier is set forth in a written agreement signed by the parties.

*(B) The requirement to make referrals to a particular provider, practitioner, or supplier does not apply if the patient expresses a preference for a different provider, practitioner, or supplier; the patient's insurer determines the provider, practitioner, or supplier; or the referral is not in the patient's best medical interests in the physician's judgment.*

*(v) The required referrals relate solely to the physician's services covered by the scope of the employment or the contract, and the referral requirement is reasonably necessary to effectuate the legitimate business purposes of the compensation arrangement. In no event may the physician be required to make referrals that relate to services that are not provided by the physician under the scope of his or her employment or contract.*

Facilities should consider the advantages and disadvantages, business needs, and ramifications of requiring referrals. As always, facilities should consult with HHSC Legal Department for any contract or agreement with a physician or other health care provider.