

CMS ISSUES GUIDANCE ON RELOCATION OF PHYSICIAN-OWNED HOSPITALS

Last month, the Centers for Medicare & Medicaid Services (“CMS”) issued a rare Stark Law **Advisory Opinion**, concluding that a physician-owned hospital (“Hospital”) seeking to relocate eight miles from its current location and add an emergency department would continue to satisfy the Stark Law’s Whole Hospital Exception (“Exception”). This is one of several CMS Advisory Opinions providing helpful guidance to physician-owned hospitals, but the first CMS Advisory Opinion to be issued since December 2021.

The Exception requires, among other elements, that hospitals with physician ownership or investment must have had a provider agreement in place as of December 31, 2010, and that they cannot exceed (i) the aggregate percentage of ownership held by physicians as of March 23, 2010; or (ii) the aggregate number of operating and procedure rooms and beds for which the hospital was licensed as of March 23, 2010.

Here, the Hospital requested a CMS Advisory Opinion on whether it would remain the “same hospital” following the relocation of its operations approximately eight miles from its current location and the addition of an emergency room department. CMS opined that the Hospital would remain the “same hospital” following relocation. In reaching its conclusion, CMS considered that the Hospital would maintain the same number of licensed operating rooms, procedure rooms and beds after relocation, as well as its existing name, logo, branding, state license, Federal Tax Identification Number and Medicare provider agreement. Additionally, the ownership and leadership of the Hospital would remain unchanged and the Hospital would retain the same patient base. Based on these assurances, CMS certified that the Hospital remained the “same hospital” for purposes of the Exception, therefore permitting the physician-owners of the relocated Hospital to continue to refer to the Hospital, and the Hospital to bill for, Medicare items and services.

CMS did not appear to weigh any one of the factors listed over the others in its analysis; however, this Advisory Opinion is based upon the specific facts presented and a different result could have been reached if one or more of these factors were not present.

PRACTICAL TAKEAWAYS

- Physician-owned hospitals planning to expand or relocate operations should take note of CMS’s key considerations as outlined in this Advisory Opinion to ensure continued adherence to Medicare/Medicaid program requirements.

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