

Stark II Advanced

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Greenview — Round I

Greenview Health System

Three hospitals

Two urgent care centers

Eveready Emergency Group (EEG)

Physician group - emergency services

Negotiation for exclusive contract

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Issue: Payment

EEG :

- Greenview to bill and collect for pro fees
- Pay EEG billed fees less % for cost of billing, bad debt

Greenview :

- EEG bill and collect
 - Guarantee payment for Medicaid patients
 - Annual stipend
 - Per patient payment
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Issue: Payment of % of Professional Fees

- Financial relationship between physician and entity?
- Does physician refer to entity for designated health services?
- Possible exception?
- Personal service exception
- Indirect compensation issues

Personal service exception

- In writing, signed, specifies services
 - Covers all services to be provided
 - Aggregate services are reasonable and necessary
 - Term of at least one year
 - Compensation
 - Set in advance
 - Does not exceed fair market value
 - Not determined in way that takes into account volume or value of referrals of DHS or other business generated between the parties
- Services do not involve illegal activities

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Professional fees

- Common method of paying physicians for hospital based services
- Set in advance, fmv?
- Based on volume/value of referrals for DHS; other business?

Inpatient and outpatient hospital services as DHS do not include professional fees

Phase I Stark II Regulations

- Volume/value of DHS referrals
- Set in advance
- Per unit or time based payments if:
- FMV—sufficient detail to be objectively verified
- Does not vary during agreement in manner taking into account referrals of DHS

Note on percentage arrangements—not “set in advance”

CMS delay of effective date for “set in advance” compensation

- From January 4, 2002 to January 6, 2003
- Further review of compensation arrangements based on % of fluctuating measure, such as collections or billed amounts

Issue of % withhold for cost of billing and collections/bad debt

Indirect compensation arrangement?

- Unbroken chain of financial relationships?

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Indirect compensation arrangement

- Dr. receives aggregate compensation for EEG that varies based on volume/value of DHS referrals or other business generated by dr. to Greenview?
- Greenview has knowledge/acts in reckless disregard/deliberate ignorance of fact that dr. receives compensation that varies based on volume/value, generation of business?

Indirect financial arrangement: knowledge standard

- Referral prohibited only when DHS entity:
- Has actual knowledge of dr.'s financial relationship (ownership/investment in DHS entity or aggregate compensation reflecting volume/value or business generated for DHS entity; or
- Acts in reckless disregard/deliberate ignorance of whether indirect financial relationship exists

Indirect compensation exception

- Compensation received by dr. is FMV, not taking into account value/volume of referrals or other business generated by the dr. for Greenview
- Arrangement in writing, signed by parties, specifies services (exception for employment)

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- Does not violate anti-kickback statute or laws for billing/claims

Indirect compensation exception

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Federal/state anti-kickback law issue

- Personal services safe harbor
 - Total remuneration set in advance, volume and value issues
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Issue: Medicaid Stipend

EEG bills and collects professional fees/ Greenview stipend

- Flat fee: annual stipend for cost of Medicaid patients
 - Per patient stipend: set in advance; volume/value issues
 - Personal services exception vs. indirect compensation arrangement
 - Note: state law issues on supplementing Medicaid fees
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Issue: Productivity Plan

Proposal:

- Greenview to pay % professional fees
- % to increase when total patient visits/physician ratio exceeds benchmark
- EEG to pay bonus to physicians at each doctor's patient visit/shift benchmark
- No further information from EEG on group compensation
- Did the original % for cost of billing reflect fmv?
- Shifting %: not "set in advance"; reflects volume/value

Indirect compensation arrangements and group practice incentives:

- Greenview: knowledge of EEG internal incentives; obligations to review?
 - Request assurance of EEG payment to physicians not related to volume/value of DHS referrals, other business generated
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Issue: Cost Saving Incentives

Proposal:

- Greenview and EEG to set specific cost saving goals in use of supplies
- Implement and measure savings
- Split cost savings: 75% Greenview, with 50% committed to ED improvements; 25% to EEG
- Note: CMP issue
- Stark: Personal service exception; provision for physician incentive plan
- Physician incentive plan limited to plans?

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Fair market value exception?

- In writing, signed by parties, covers only identifiable items or service, all specified in agreement
- Specifies timeframe
- Compensation set in advance, FMB, not take into account volume value of DHS referrals or other business generated by the referring physician
- Commercially reasonable, legitimate business purpose
- Meets anti-kickback law safe harbor, approved in OIG advisory opinion, or does not violate anti-kickback law
- Does not involve illegal activity

Options:

- No payment of savings to EEG or physicians
 - % of savings dedicated to ED/urgent care improvements—but caution on potential benefit/value to physicians
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Issue: Recruitment

Proposal:

- Greenview and EEG to split recruitment costs
- Greenview to provide EEG salary guarantee for new physicians

Recruitment exception (draft regs):

- Remuneration by hospital to physician
- To induce physician to relocate to hospital geographic area; medical staff member
- No referral requirement; no ban on membership at other hospitals
- Remuneration not linked to volume/value

Other exceptions:

- Isolated transaction—difficult to qualify
- Fair market value

Practical and legal considerations:

- Need for physician recruitment; alternative costs to Greenview
 - Salary guarantees: parallel obligations hospital/group and group/physician
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Greenview: Round II

- EEG want to develop new income stream
 - Formation of Equipment-to-Go
 - Equipment leasing
 - Other ventures and arrangements
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Issue: Equipment-to-Go--Formation

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- Potential investors: EEG or individual physicians?
- Will Equipment-to-Go provide DHS or provide equipment related to DHS?

If Equipment-to-Go is an existing business, and EEG is investing in it, what alternatives does EEG have in terms of investment?

- Cash
- Stock
- Notes

In-office ancillary services exception

- Does EEG meet definition of group practice?
- Does EEG use equipment from Equipment-to-Go and meet requirements for in-office ancillary services exception?

Indirect ownership arrangement

- Unbroken chain of physician/entities with ownership interests
- Entity furnishing DHS has actual knowledge or acts in reckless disregard/deliberate ignorance of fact that referring physician has ownership interest in entity that provides DHS
- Note: Non-qualifying ownership interest seen as compensation relationship

Indirect compensation arrangement and exception

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Issue: Equipment-to-Go as Lessor of Equipment

Form of lease payment:

- Flat monthly/annual rent
- Per unit fee
- Note: Stark vs. Anti-Kickback Issues.

Equipment rental exception (draft regs):

- In writing, signed by parties, specifies equipment covered
- Reasonable and necessary for legitimate business purpose; exclusive use by lessee when used by lessee
- Term of at least one year
- Rental charges set in advance, FMC, not determined in manner taking into account volume/value of DHS referrals or other business generated
- Commercially reasonable even if no referrals between parties
- Set in advance/per unit provision under Phase I regulations
- Establishing fair market value of rental payments
- Use of appraiser
- Focus on market alternatives, rentals compared to independent third party vendors

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Issue: Equipment-to-Go as Provider of Services

If DHS ,

- Limited exceptions for direct physician investment if physicians will make referrals to the entity for DHS
- In office ancillary services

Option: multi-state practice management group arrangement/investment entity

- Multiple investor pods
- Equipment in multiple states
- No referrals by investors or pods in equipment used by that pod

If non-DHS, no referrals

Note: Anti-Kickback investment issues

- Small venture safe harbor
 - ASC safe harbor
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Issue: EEG as Multi-Specialty Medical Group

- EEG and HeartFirst form single physician group
- Can EEG or Equipment-to-Go own and operate a cardiac catheterization laboratory?
- Would EEG/HeartFirst physicians refer to cath lab for DHS?
- No inpatient/outpatient hospital services
- Imaging as part of procedure

Note: Anti-kickback law issues

- Small venture safe harbor
 - ASC safe harbor
 - Multi-specialty group issues
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Issues: Group to Provide Other Services/Facilities-ASCs

Phase I Regulations on DHS:

- DHS do not include services reimbursed by Medicare as part of composite rate (ASCs or SNF Part A), except when the services that would otherwise be DHS are themselves payable through a composite rate (such as home health services, inpatient pps services)
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Issues: Greenview Lease--Equipment-to-Go MRI

Per Unit

- Equipment rental exception
- Set in advance and volume/value provisions allow per unit FMV
- FMV of the rental fee
- FMV of all other terms

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Percentage arrangement

- Stark issues
- Anti-kickback issues

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Issues: Greenview Investment in Ambulatory Surgery Center

Stark:

- Ownership in ASC; composite rate procedures—no DHS?

Anti-Kickback Law:

- ASC safe harbor
 - Hospital as investor
 - EEG as investor; multi-specialty issues
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