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"Group Practice" Makes Perfect: What Is a "Group Practice" Under the Federal Stark Law, and How Can Physicians Comply?

The term "group practice" is used to refer to a group of physicians and other medical practitioners working together in one office. However, under the federal Stark Law, the term "group practice" carries a specific legal definition. The Stark Law, originally enacted in 1989, prohibits physicians from referring Medicare or Medicaid patients for certain designated health services[1] to entities in which the physicians have a financial interest, unless an exception applies.[2] Over time, the Stark Law has evolved into a highly complex regulatory framework that imposes strict liability, meaning intent to violate the law is not required for liability.[3] As Fourth Circuit Judge Wynn wrote in 2015:

> It seems as if, even for well-intentioned health care providers, the Stark Law has become a booby trap rigged with strict liability and potentially ruinous exposure—especially when coupled with the False Claims Act.[4]

In this article, we seek to demystify the group practice requirement component of the Stark Law so physicians can better understand and comply with its conditions.

Why Being a Group Practice Matters

The concept of a group practice is a key component of the Stark Law. A medical practice must qualify as a group practice in order to qualify for several important exceptions to the Stark Law, including:

- the Physician Services exception; and
- the In-Office Ancillary Services exception.

The Physician Services exception applies to physician-to-physician referrals within the same medical practice. The In-Office Ancillary Services exception allows a practice to refer patients for certain services provided within the practice, such as clinical lab tests, physical therapy, MRI services, and X-ray services. Compliance with these and other exceptions is necessary to shield physicians and their medical practices from liability under the Stark Law.

Stark Law Group Practice Requirements

In order to qualify as a group practice under Stark, a physician practice must meet the following requirements:

1. ***Single Legal Entity:*** The practice must be organized as a single legal entity operating primarily for the purpose of being a physician group practice, partnership, or other entity formed under state law.
2. ***Two Physicians:*** The group must consist of at least two physicians who may be owners or employees.
3. ***Range of Care:*** Each physician member in the group[5] must provide substantially the full range of patient care services that the physician typically provides through the use of shared office space, personnel, equipment, and other resources.
4. ***Services Furnished by Group Practice Physicians:*** Substantially all (meaning at least 75 percent) of the physician services provided by the physician members of the practice must be furnished by and billed through the group.

5. ***Distribution of Expenses and Income*:** Practices must distribute overhead expenses and income according to methods set in advance.
6. ***Unified Business:*** The practice must have centralized decision-making, as well as consolidated billing, accounting, and financial reporting; location and specialty-based compensation are permitted for services that are not designated health services.
7. ***Volume or Value of Referrals:*** Compensation of physicians in the group may not be based on the volume or value of their referrals.
8. ***Physician-Patient Encounters:*** Physicians who are members of the group must conduct at least 75 percent of the patient encounters of the practice.[6]

Profit Sharing and Productivity Bonuses in Group Practices

Physician practices that qualify as group practices are permitted to engage in profit sharing and offer productivity bonuses.

1. ***Profit Sharing:*** Physicians in a group practice may be paid a share of the overall profits derived from all of the designated services of the practice (a) when the shares of such profits are not directly based on the volume or value of a physician's referrals, and (b) if the profits are divided in a reasonable and verifiable manner. Profits that are divided per capita or are distributed based on the same method used for distributing non-designated health services will be deemed not to be directly related to the volume or value of referrals.
2. ***Productivity Bonuses:*** Physicians in a group practice may be paid a productivity bonus based on services they have personally performed or services "incident to" such personally performed services so long as those services are not directly related to the volume or value of the physician's referrals. Such bonuses must also be calculated in a reasonable and verifiable manner. A productivity bonus will be deemed not to relate directly to the volume or value of a physician's referrals if (a) it is based on the physician's total patient encounters or the relative value units performed by the physician; (b) it is based on services that are not designated health services; or (c) revenues from designated health services constitute less than 5 percent of the group's total revenue, and the portion of such revenue distributed to each physician constitutes 5 percent or less of that physician's total compensation from the group.[7]

Understanding the Stark Law's group practice requirements is essential for physician practices seeking to provide ancillary services to patients and for practices whose compensation model includes profit sharing or productivity bonuses. By meeting the detailed criteria for group practice status, medical practices can utilize important exceptions to the Stark Law, such as the Physician Services and In-Office Ancillary Services exceptions, and focus on providing quality patient care.

If you have questions or concerns regarding the Stark Law, group practices, or other federal health care regulatory issues, the experienced attorneys at Day Pitney are available to help you navigate these complex legal requirements.

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[1] Designated health services include clinical laboratory services; physical and occupational therapy services; outpatient speech-language pathology services; radiology and certain other imaging services; radiation therapy services and supplies; durable medical equipment and supplies; parenteral and enteral nutrients, equipment, and supplies; prosthetics, orthotics, and prosthetic devices and supplies; home health services; outpatient prescription drugs; and inpatient and outpatient hospital services. 42 U.S.C. 1395nn.

[2] 42 U.S.C. 1395nn.

[3] https://oig.hhs.gov/compliance/physician-education/fraud-abuse-laws/#:~:text=The%20Stark%20law%20is%20a,the%20law%20is%20not%20required.

[4] *U.S. ex rel. Drakeford v. Tuomey*, 792 F.3d 364, 395 (4th Cir. 2015) (concurring opinion).

[5] Physician members of a group practice include physician owners and employees. 42 CFR § 411.351.

[6] 42 CFR § 411.352.

[7] 42 CFR § 411.352(i).

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