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New Stark Disclosure Standards under the Health Reform Act—What Providers Should Do Today

On March 23, 2010, President Obama signed into law the Patient Protection and Affordable Care Act (the “Act”). Among the changes under the Act is a change to one of the most commonly used exceptions under the Stark statute, specifically the exception for in-office ancillary services.

New Disclosure Requirements for the In-Office Ancillary Services Exception

Under the Stark statute, unless an exception is satisfied, if a physician has a financial relationship with an entity that provides designated health services (“DHS”), the physician may not refer Medicare beneficiaries to that entity for designated health services. In addition, the entity may not present a claim or bill for such services.

One of the most commonly used exceptions under Stark is the exception for “in-office ancillary services”. This exception is typically relied upon by physician practices (including private practices and many hospital/health system affiliated practices) that provide radiology services, clinical lab services and other services within the physician practice. Section 6003 of the Act requires that the Secretary of the Department of Health and Human Services (“HHS”) add a new disclosure requirement to the Stark statute’s in-office ancillary services exception. Under the new standard, referring physicians who provide MRI, CT or PET scans/services (and any other DHS that the Secretary of HHS may deem appropriate) under the in-

office ancillary services exception, will be required to inform a patient in writing, at the time of the referral, that the patient may obtain the same service(s) from a provider other than the referring physician, another physician in the referring physician’s group practice, or from an individual who is directly supervised by the referring physician or group member. The physician must also provide the patient with a written list of suppliers who furnish the same service(s) in the area in which the patient resides.

The effective date listed for this change in the Act was **January 1, 2010**. As of the date of this advisory, the Secretary of HHS has not yet issued updated regulations relating to this change, but providers should begin planning as soon as possible for compliance with the new standard.

If you have any questions or for more information about the Act’s changes to the Stark statute, or if you need any assistance implementing or ensuring compliance with the new requirements, please contact Jim Daniel, Bill Hall, Mike Newby or Harold Han at (804) 967-9604, or by email at: jdaniel@hdjn.com, bhall@hdjn.com, mnewby@hdjn.com or hhan@hdjn.com. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm’s website at www.hdjn.com.

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