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D.C. Court Upholds Stark Restriction on Under Arrangements Joint Ventures

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Last week, the U.S. District Court for the District of Columbia issued a decision upholding the validity of regulatory provisions contained in the 2008 amendments to the federal Stark regulations. The amendments prohibit a physician owner from referring his or her Medicare patients for designated health services to a joint venture in which the physician has an ownership interest and which provides services "under arrangements" with a hospital. They also prohibit payments for space and equipment rentals that are based on percentage-based or "per click" compensation. In an "under arrangement" transaction, the hospital contracts with a physician-owned joint venture (or any other third party) for the performance of a hospital service, but the hospital is responsible for billing and collecting payments for such services.

A non-profit corporation ("CUI") comprised of businesses that provide equipment and technical personnel for performing various urological medical services initiated a lawsuit to challenge the validity of the regulations. Urologists had formed joint ventures to purchase expensive laser surgery equipment with the intention of entering into an "under arrangements' agreements with hospitals. CUI's members consist largely of these urologist-owned joint ventures. CUI claimed that CMS violated the Administrative Procedure Act ("APA") in adopting the amendments, that Congress intended to allow "per click " payments, that CMS acted arbitrarily and capriciously in adopting the regulatory amendments, and that the adoption of the amendments violated the Regulatory Flexibility Act.

The court rejected each of the arguments advanced by the plaintiff and granted the government's motion for summary judgment. The court first reviewed CMS' regulatory expansion of what it means to "furnish" designated health services so that both the billing entity (i.e. the hospital) and the entity that performed DHS (i.e. the joint venture) were deemed entities that "furnish" designated health services under the Stark law. The court found that nothing in the Stark law foreclosed CMS from expanding its definition of the term "furnishing" designated health services so as to include the provider of designated health services (such as a physician-owned joint venture), and that the CMS interpretation of the Stark law was both a permissible construction of the law and was reasonable in practice.

The court also upheld the prohibition on "per click" payments in leasing arrangements. The court noted that the Stark law did not contain any language which would permit lease payments calculated

according to units of service. The court also found that CMS was entitled to rely on evidence that per-click payments lead to patient abuse or harm to the Medicare system in the context of physician self-referrals, and that Congress "included the means to address evolving fraud risks by inserting into many of its exceptions . . . specific authority for the Secretary to add conditions as needed to protect against abuse.". Finally, the court found that CMS adequately complied with the requirements of the regulatory Flexibility Act before finalizing the regulatory change.

The court's decision in this case underscores the broad deference that will be accorded by a court to CMS in evaluating whether or not the agency's interpretation of the Stark law is a reasonable one. Given the fact that the restrictions on "under arrangements" joint ventures and "per click" leasing payments have been upheld as a reasonable interpretation of the Stark law, it is unlikely that these restrictions will go away any time soon. Physicians evaluating whether or not to get involved in joint ventures or leasing arrangements will need to carefully consider whether or not a proposed financial arrangement could be viewed as potentially violative of the Stark law, and should consult with legal counsel before moving forward with any plans to invest in such arrangements.

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