

ARTICLES

2018 Non-Monetary Compensation Limits

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Industries

Health Care

The Stark Law (The Physician Self-Referral Law) requires entities that offer designated health services (DHS), such as hospitals, to keep track of what otherwise would be minor, non-cash items given to certain physicians. The term “financial relationship” under the Stark Law is interpreted very broadly by the government. The broad interpretation is because the Stark Law covers beneficiaries under Medicare or Medicaid, all items, services, and benefits (in addition to cash or cash equivalents), in any form. However, not every item, benefit, or service must be tracked for every physician, and not in every instance. The particular nuances require careful examination. This article reviews the Stark Law in regard to the “non-monetary compensation” and “medical staff incidental benefits” exceptions. These exceptions govern certain gifts or benefits conferred on members of a medical staff by a hospital.

Both of these exceptions allow DHS entities to confer on each referring physician (i.e., each unique provider number) a relatively nominal amount of non-cash items, services, and benefits per year. The nominal amount is adjusted annually and updated annually by Centers for Medicare & Medicaid Services (CMS). This annual limit applies to each physician, but cannot be aggregated to make a larger gift to a group practice or other group of physicians.



For example, under the “non-monetary compensation” exception, a \$2,000 oil painting cannot be given to a four-physician practice and divided by four. The Stark Law will consider this gift to be indivisible, representing a gift valued at \$2,000 to each of the four physicians. The exception also permits a hospital with an organized medical staff to host a staff appreciation event once a year, such as a medical staff holiday party, without regard for the limit. However, any gifts or gratuities offered in connection with the event are subject to the limit.

The “medical staff incidental benefit” exception basically covers benefits provided to a physician while that physician is treating patients on behalf of the hospital on the hospital’s campus. Normally, this exception covers the provision of pagers or a two-way radio, or meals to physicians while the physicians are completing their patient charts. The amount of remuneration for these incidental benefits is relatively low as compared to the limit for non-monetary compensation.

For the calendar year 2018, DHS entities may provide non-monetary compensation to physicians up to an aggregate amount of \$407 for calendar year 2018. The dollar limit for “medical staff incidental benefits” (e.g., meals, parking, and other items or incidental services that are used on the hospital’s campus) is less than \$34 per occurrence for the calendar year 2018.

To fit within either exception, there are several criteria that must be satisfied. The gifts or gratuities cannot be cash or cash equivalents, a physician cannot solicit the hospital for the gift or gratuity, and the gift or gratuity cannot be based upon the volume or value of referrals.

The government expects DHS entities to inventory non-monetary compensation and medical staff incidental benefits to confirm they are meeting the law’s requirements. Entities should update their tracking tools to reflect the new annual limits each year. Further, entities should review non-monetary compensation provided in 2018 to ensure that such compensation did not exceed the limit. If the limit was exceeded, the entity must take any necessary corrective action to repay excess amounts within the allotted time provided by the government.

If you have any questions or concerns about how the Stark Law and these exceptions may apply to your entity, please contact [Jack Caynon](#) at 503.243.1652 or jcaynon@sussmanshank.com.

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