

August 2, 2002

**MEMORANDUM REGARDING THE FINAL PROVIDER-BASED STATUS RULES
AND HOSPITAL-PHYSICIAN JOINT VENTURES**

This memorandum is intended to update our clients regarding recent developments with regard to the provider-based status rules and hospital-physician joint ventures. On April 7, 2000, the Centers for Medicare and Medicaid Services ("CMS") published a final rule specifying criteria for provider-based status. Under these final rules, joint ventures were prohibited from obtaining provider-based status. On May 9, 2002, CMS published a proposed rule which suggested making various changes to the provider-based status rules. Among these suggested changes was a move away from the previous blanket prohibition on provider-based status for joint ventures. Instead, CMS proposed that joint ventures that were located on the campus of a provider could obtain provider-based status if certain other requirements were met, while joint ventures located off campus would still be subject to the prohibition against obtaining provider-based status.

On August 1, 2002, CMS published final regulations regarding changes to the hospital inpatient prospective payment system for fiscal year 2003.¹ Among the issues addressed in these final regulations were the proposed changes to the provider-based status rules. In these final regulations, CMS adopted the proposals it had made in the May 9th proposed regulations regarding provider-based status for joint ventures. For joint ventures that qualify for provider-based status under these new rules, this is a significant development because provider-based status typically results in higher reimbursement from the Medicare program than freestanding facility status.

As noted above, the final regulations will permit joint ventures that are located on the campus of a hospital provider and that meet other specified requirements to obtain provider-based status. Under the provider-based rules, "on campus" includes areas located within the physical area immediately adjacent to a hospital's main buildings, other areas and structures located within 250 yards of the main buildings, and any other areas determined on a case-by-case basis by the applicable CMS regional office to be part of the hospital's main campus.

Under the final regulations, a joint venture located on a hospital's campus will be able to obtain provider-based status if the following requirements are met:

State Licensure - The joint venture and main provider (i.e., hospital) are operated under the same state license, unless the state licensing body does not permit

¹ 67 Fed. Reg. 49982.

licensure of both entities under the same license or requires the joint venture and hospital to have separate licenses.

Clinical Integration - The clinical services of the joint venture and the hospital are integrated, as evidenced by the following: (i) professional staff of the joint venture have clinical privileges at the hospital; (ii) the hospital maintains the same monitoring and oversight of the joint venture as it does for its other departments; (iii) the medical director of the joint venture maintains a reporting relationship with the hospital's Chief Medical Officer or other similar official that has the same frequency, intensity and level of accountability that exists for a typical hospital department medical director and is subject to the same supervision and accountability as any other hospital director; (iv) medical staff committees and other professional committees of the hospital are responsible for medical activities of the joint venture, including quality assurance, utilization review and the coordination and integration of services (to the extent possible) between the joint venture and the hospital; (v) medical records for patients of the joint venture are integrated into a unified retrieval system (or cross reference system) of the hospital; (vi) services provided by the joint venture and the hospital are integrated and (vii) patients treated at the joint venture who require further care have full access to all hospital services and are referred where appropriate to the corresponding inpatient or outpatient department or service of the hospital.

Financial Integration - The financial operations of the joint venture are fully integrated within the financial system of the hospital, as evidenced by shared income and expenses between the hospital and the joint venture and proper allocation of costs of the joint venture to appropriate cost centers of the hospital, and the financial status of the joint venture is incorporated and readily identified in the hospital's trial balance.

Public Awareness - The joint venture is held out to the public and other payers as part of the hospital and when patients enter the joint venture, they are aware that they are entering the hospital and will be billed accordingly. The facility need not advertise that it is a joint venture, but must be identified as provider-based with respect to the hospital.

Under the Stark Law², hospital-physician joint ventures must qualify for an exception that applies to the ownership interests of the physicians in the joint venture if the joint venture will provide “designated health services” (within the meaning of the Stark Law) that are referred by physician investors. For ambulatory surgery centers (“ASCs”), the Stark Law regulations state that designated health services do not include services that are paid under composite rates, including services reimbursed under the ambulatory payment group rates. Thus, interests owned by referring physicians in ASC joint ventures that provide only services reimbursed under the

² 42 U.S.C. Section 1395nn. The Stark Law prevents physicians from referring Medicare and Medicaid “designated health services”, including inpatient and outpatient hospital services and a number of other items and services, to an entity with which the physician has a financial relationship unless an exception applies.

ASC payment rates will be excepted from the anti-referral prohibitions of the Stark Law. For other hospital-physician joint ventures, like cardiac catheterization laboratories, the joint ventures are typically structured to not include services that would constitute designated health services under the Stark Law, unless an ownership or investment interest exception, such as the exception for certain rural providers, applies.

A hospital-physician joint venture that qualifies for, and obtains, provider-based status would appear to result in physician investors having a non-excepted ownership interest in the venture unless the venture is located in a rural area and provides substantially all of its designated health services to individuals residing in a rural area. This is because provider-based status requires that services provided by the joint venture facility must be billed under the hospital's provider number as inpatient or outpatient hospital services, and this would cause them to be designated health services for Stark Law purposes. Thus, the Stark Law may prevent many hospital-physician joint ventures from obtaining provider-based status. We have been advised informally by CMS that a provider-based joint venture must still meet Stark Law requirements.

If you have any questions regarding the provider-based status rules relating to joint ventures or other entities or the Stark Law, please feel free to contact Chris Phillips at (402) 346-6000.