Report on Medicare Compliance Volume 30, Number 23. June 21, 2021
In Less Flashy Stark Changes, CMS Hit Period of Disallowance, AKS

By Nina Youngstrom

CMS has made the period of disallowance more flexible under the revised Stark Law regulation,[1] which took effect Jan. 19. It's one of several changes that was overshadowed by more momentous provisions, including new exceptions for value-based care and revised definitions of fair market value and commercially reasonable, but it's notable just the same, an attorney said.

The period of disallowance refers to a time when an arrangement with a physician is out of compliance with Stark, which means hospitals and other entities that provide designated health services (DHS) are unable to bill Medicare for services referred by the physician. For a long time, CMS had a bright-line rule for when the period of disallowance began and ended. It started when a financial relationship didn't satisfy a Stark exception. For noncompliance unrelated to compensation, the period of disallowance ended when the financial relationship satisfied an exception. For noncompliance related to the payment of excess or insufficient compensation, the period of disallowance ended when the money was repaid.

"It was somewhat of a rigid requirement," said attorney Rick Rifenbark, with Polsinelli in Los Angeles. "The doctor could not refer to you until you cleaned up the arrangement. It was more challenging to operationalize." He said there was "push back on the period of disallowance rules."