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Value-Based Exceptions Are Escape From 'Traditional' FMV Standards

By Nina Youngstrom

When a hospital sets up a clinic at a homeless shelter, it offers a generous salary to entice physicians to work there. Because the clinic is a value-based enterprise (VBE) that complies with one of the new value-based exceptions in the revised Stark Law regulation,[1] the hospital is able to pay the physicians a salary that doesn't meet traditional fair market value standards (e.g., productivity compensation). The goal of the VBE is to treat minor illnesses that tend to land homeless and uninsured people in the emergency room, sparing it from sore throats and other routine complaints that are better treated elsewhere and providing the "targeted population" with access to medical care they otherwise lack.

Freeing hospitals and other providers from the "traditional fair market value compensation parameters" is a trade-off at the heart of the value-based exceptions, said attorney Bob Wade, with Barnes & Thornburg in South Bend, Indiana. "We are establishing a value-based purpose and saving money in the avoidance of emergency department costs and compensating physicians in a manner unshackled by fair market value, which you couldn't do but for the value-based exception," he explained. "The hospital can compensate the physician adequately for the services performed, but it's for the avoidance of emergency room costs vs. incurring of such costs."

But hospitals have to comply with a host of new requirements, and missing one of them could knock the VBE out of compliance.[2] "Everything is very definitionally driven," Wade said. In a nutshell, the main definitions are: