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## Health Care Client Alert

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## STARK LAW IMPLEMENTATION OF NEW EXCEPTIONS: Timeshare Arrangements

**E**ffective at the beginning of this year, hospitals and physician organizations have a new Stark law exception: “timeshare” arrangements, where a visiting physician pays for the right to use office space — including furnishings, equipment, and personnel — on a periodic basis. Prior to the implementation of the new timeshare exception, these types of arrangements had to comply with the rental of office space exception, which includes “exclusive use” and advance block schedule requirements that practices found burdensome. The timeshare exception regulations expressly permit compensation using a formula that is time-based (for example, a limited number of days or portions of days per month). The exception protects, however, only those arrangements that grant a right or permission to use the premises, equipment, personnel, etc., of another person or entity without establishing a possessory leasehold interest.

The requirements for the new exception include (among others):

- 1. A Written Arrangement.** The timeshare arrangement is set out in writing, signed by the parties, and specifies the premises, equipment, personnel, items, supplies, and services covered by the arrangement;
- 2. Predominant Use Is for Evaluation and Management Services to Patients.** The premises, equipment, personnel, items, supplies, and services covered by the arrangement are used predominantly for the provision of evaluation and management services to patients and on the same schedule;

- 3. Equipment Is Located in Same Premises, Not Used to Furnish Designated Health Services & Not Lab Equipment.** The equipment is (a) located in the same building where the evaluation and management services are furnished; (b) not used to furnish designated health services other than those incidental to the evaluation and management services furnished at the time of the patient's evaluation and management visit; and (c) not advanced imaging equipment, radiation therapy equipment, or clinical or pathology laboratory equipment (other than equipment used to perform CLIA-waived laboratory tests); and
- 4. Compensation Is Not Based on Percentage of Revenue Raised or Per-Unit of Service Fees that Are Not Time-Based.** Compensation is not based on (a) a percentage of the revenue raised, earned, billed, collected, etc., or (b) per-unit of service fees that are not time-based.

In addition, the compensation over the term of the arrangement must be set in advance, consistent with fair market value, and not determined in a manner that takes into account, directly or indirectly, the volume or value of referrals or other business generated between the parties.

Bodman can provide guidance on this matter and others and help your organization review and develop agreements that meet your needs and provide practical advice. If you would like to discuss these or any other legal issues affecting your organization, please contact the chair of our Health Care Law Group, Bill Shipman, at (313) 393-7562 or [wshipman@bodmanlaw.com](mailto:wshipman@bodmanlaw.com).

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