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HEALTH CARE LAW
FOULSTON SIEFKIN ISSUE ALERT

AMENDMENTS TO THE IN-OFFICE ANCILLARY SERVICES EXCEPTION TO THE STARK LAW

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ON NOVEMBER 24, 2010, the Centers for Medicare and Medicaid Services issued final regulations amending the in-office ancillary services exception to the Stark law as required by Section 6003 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148. The Stark law (Section 1877 of the Social Security Act) prohibits a physician from making referrals for certain “designated health services” (“DHS”) payable by Medicare to an entity in which the physician or the physician’s immediate family member have a financial relationship unless an exception applies. One of the exceptions is the in-office ancillary services exception (42 U.S.C. § 1395nn(b)(2)), which permits a physician to refer patients for DHS to the referring physician’s practice group, provided the following requirements are met:

1. The services are furnished by the referring physician or a member of the physician’s practice group.
2. The services are furnished in the building in which the referring physician practices or the building in which the referring physician’s practice group provides the group’s clinical laboratory services or DHS.
3. The services are billed by the physician performing or supervising the services or by the physician’s practice group.
4. The physician meets such other requirements as the Secretary of the Department of Health and Human Services may impose.

In addition, the Affordable Care Act added a patient notification requirement to the in-office ancillary services exception. Effective as of January 1, 2011, if a physician refers a patient to the physician’s practice group for an MRI, CT scan, or PET scan, the referring physician must inform the patient in writing that he/she may obtain such services from a person or entity other than the physician or the physician’s practice group. 42 C.F.R. § 411.355(b)(7). Further, the written notice must include a list of at least five (5) other suppliers (e.g. physician practices and independent diagnostic testing facilities) that furnish such services within a 25-mile radius of the referring physician’s office

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location. If there are less than five (5) other suppliers within the 25-mile radius, the notice must list all of the suppliers within the 25-mile radius, but the notice does not need to include suppliers beyond the 25-mile radius. The notification must include each supplier's name, address, and telephone number. The notice must be delivered to the patient in writing at the time the referral is made.

FOR FURTHER INFORMATION

Foulston Siefkin's health care lawyers maintain a high level of expertise regarding federal and state regulations affecting the health care industry. The firm devotes significant resources to ensure our attorneys remain up-to-date on daily developments. At the same time, the relationship of our health care law practice group with Foulston Siefkin's other practice groups, including the taxation, general business, labor and employment, and commercial litigation groups, enhances our ability to consider all of the legal ramifications of any situation or strategy. For additional information regarding the In-Office Ancillary Services Exception to the Stark Law, contact **Scott Palecki** at (316) 291-9794, or **spalecki@foulston.com**. For more information on the firm, please visit our website at **www.foulston.com**.

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