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CMS Strikes Back: Unit-Based Rental Arrangements Restricted Again Under Stark Law

Last month, the Center for Medicare and Medicaid Services ("CMS") reissued its previous prohibition on certain unit-based rental arrangements that could otherwise qualify for the Stark Law rental or office space or equipment exception. While this regulatory text was previously adopted by CMS in 2009, it was struck down in 2015 by the U.S. Court of Appeals for the District of Columbia Circuit. *Council for Urological Interests v. Burwell*, 790 F.3d 212 (D.C. Cir. 2015).

The reissued rule, effective January 1, 2017, prohibits "per-click" rental charges to the extent that such charges reflect services provided to patients referred by the lessor to the lessee. CMS clarified that this rule is not an absolute prohibition on rental charges based on units of service—these rental arrangements are generally permissible. The prohibition applies only where the lessor generates payment from the lessee by referring patients to the lessee for a service to be provided using the rented space or equipment.

In light of this recent change, hospitals and health systems should carefully review and revise their policies and procedures to ensure compliance. In particular, hospitals and health systems should:

- Review existing leases and rental agreements for compliance with the reenacted final rule.
- Revise template lease and rental agreements to be compliant with the final rule.
- When contracting with physician groups, consider potential overlap of referrals and rental arrangements.

Reinhart's Health Care team is available to assist you in reviewing your policies and procedures, as well as analyzing your relationships with physicians and physician organizations. Please feel free to contact Heather Fields, Nicole Dermer or your Reinhart attorney to discuss any questions or concerns related to physician arrangements.

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