

STARK LAW DEFINITION OF GROUP PRACTICE

The Stark law definition of group practice is extensive, and includes both structural and operational requirements to qualify as a group practice under the law. Essentially, a group practice is defined as a group of two (2) or more physicians (whether as employees or as direct or indirect owners) legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association that meets the following eight (8) conditions:

1. Single Legal Entity

The group practice must be structured as a single legal entity operating primarily for the purpose of being a physician group practice in an organizational form that is recognized by the state in which it achieves its legal status (i.e. the state in which the group practice incorporates). The single legal entity may be organized by any party or parties, including, but not limited to, physicians individually incorporated as professional organizations. The single legal entity may be organized or owned, in whole or in part, by another medical practice as long as the other medical practice is not an operating physician practice, even if the other medical practice meets the Stark definition of a group practice. However, a group practice that is otherwise a single legal entity that owns subsidiary entities does not preclude the practice from meeting the Stark law definition of group practice. A group practice that operates in more than one state will be considered a single legal entity, even if it is composed of multiple legal entities, if the following conditions are met:

- The states in which the group practice operates are contiguous (*each state does not need to be contiguous to every other state*); and
- The legal entities are absolutely identical as to ownership, governance, and operation; and
- Organization of the group practice into multiple entities is necessary to comply with jurisdictional licensing laws of the states in which the group practice operates

A single legal entity does not include informal affiliations of physicians that are formed substantially to share profits from referrals, or separate group practices that are under common ownership or control through a physician practice management company, hospital, health system, or other entity or organization.

2. Range of Care

Each physician member of the group practice must furnish substantially the full range of patient care services that the physician routinely furnishes, including medical care, consultation, diagnosis, and treatment, through the joint use of shared office space, facilities, equipment, and personnel.

3. Services Furnished by Members of Group Practice

Substantially all (*no less than 75 percent*) of the patient care services of the physicians who are members of the group practice must be furnished through the group and billed under a billing number assigned to the group, and the amounts received must be treated as receipts of the group.

Patient care services must be measured by one of the following:

- The total time each member spends on patient care services documented by any reasonable means such as time cards, appointment schedules, or personal diaries
- Any alternative measure that is reasonable, fixed in advance of the performance of the services being measured, uniformly applied over time, verifiable, and documented

Note: The substantially all test does not apply to any group practice that is located solely in a Health Professional Shortage Area (HPSA) as HPSA is defined in the Stark law. For a group practice that is located outside of a HPSA, any time a group practice member spends providing services in a HPSA should not be used to calculate whether the group practice has met the substantially all test, even in instances in which the member's time is spent in a group practice, clinic, or office setting.

4. Distribution of Expenses and Income

The overhead expenses of, and income from, the practice must be distributed according to the methods that are determined before the receipt of payment for the services giving rise to the overhead expense or producing the income. A group practice is not prevented from adjusting its compensation methodology prospectively, subject to restrictions on the distribution of revenue for designated health services ("DHS").

5. Unified Business

The group practice must be a unified business having at least one of the following features:

- Centralized decision-making by a body that is representative of the group practice that maintains effective control over the group's assets and liabilities, including but not limited to, budgets, compensation and salaries; and
- Consolidated billing, accounting, and financial reporting

Location and specialty based compensation practices are allowed for revenues that are not derived from services that are not DHS health services. In certain instances, as described in the special rules for productivity bonuses and profit shares, location and specialty based compensation practices are allowed for revenues that are derived from DHS.

6. Volume or Value of Referrals

No physician who is a member of the group practice directly or indirectly receives compensation that is based on the volume or value of his or her referrals, except as provided in the special rules for productivity bonuses and profit shares (see condition number 8).

7. Physician-Patient Encounters

Members of the group must personally conduct no less than 75 percent of the physician-patient encounters of the group practice.

8. Special Rules for Profit Shares and Productivity Bonuses

Profit Shares

A physician in the group practice may be paid a share of overall profits of the group, provided that the share is not determined in any manner that is directly related to the volume or value of referrals of DHS health services by the physician. A physician in the group practice may be paid a productivity bonus based on the services that he or she has personally performed, or services incident to such personally performed services, or both of these scenarios, provided that the bonus is not determined in a manner that is directly related to the volume or value of referrals of DHS by the physician. A bonus may directly relate to the volume or value of referrals of DHS by the physician if the referrals are for services incident to the physician's personally performed services.

Overall profits means the group's entire profits derived from DHS payable by Medicare or Medicaid or the profits derived from DHS payable by Medicare or Medicaid of any component of the group practice that consists of at least five (5) physicians. Overall profits should be divided in a reasonable and verifiable manner that is not directly related to the volume or value of the physician's referrals of DHS. The share of overall profits will be deemed not to relate directly to the volume or value of referrals if one of the following conditions is met:

- The group's profits are divided per capita (for example, per member of the group or per physician in the group)
- Revenues derived from DHS are distributed based on the distribution of the group practice's revenues attributed to services that are not DHS payable by any Federal health care program or private payer
- Revenues derived from DHS constitute less than 5 percent of the group practice's total revenues, and the allocated portion of those revenues to each physician in the group practice constitutes 5 percent or less of his or her total compensation from the group

Productivity Bonuses

A productivity bonus must be calculated in a reasonable and verifiable manner that is not directly related to the volume or value of the physician's referrals of DHS. A productivity bonus will be deemed not to relate directly to the volume or value of referrals of DHS if one of the following conditions is met:

- The bonus is based on the physician's total patient encounters or relative value units
- The bonus is based on the allocation of the physician's compensation attributable to services that are not DHS payable by any federal health care program or private payer
- Revenues derived from DHS are less than five (5) percent of the group practice's total revenues, and the allocated portion of those revenues to each physician in the group practice constitutes five (5) percent or less of his or her total compensation from the group practice