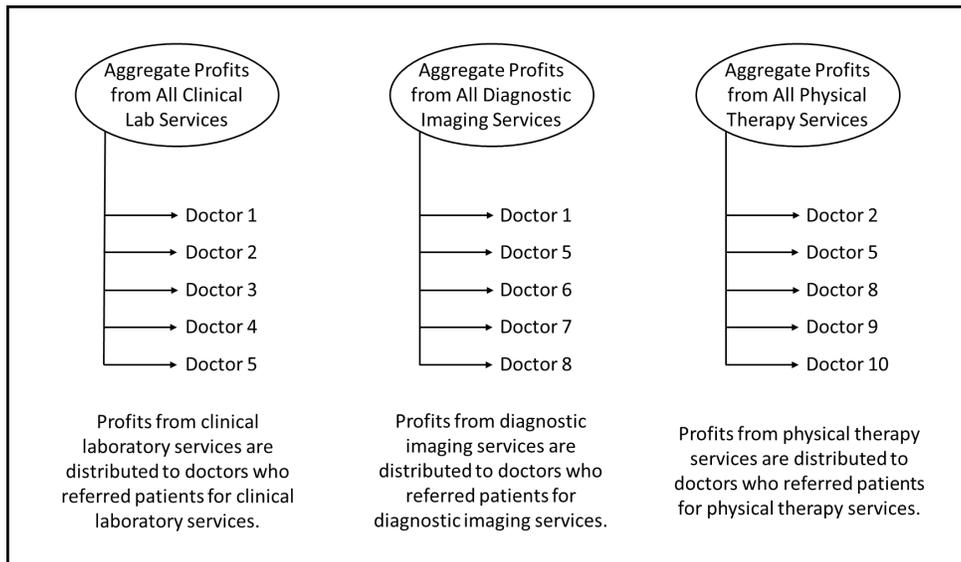


Physician Groups: What's New?

Effective January 1, 2022, the Centers for Medicare and Medicaid Services (CMS) issued new regulations pertaining to the Stark Law that affect how group practices are permitted to split profits from certain health care services, known as designated health services (DHS). Stark now restricts group practices that make in-house referrals of DHS from engaging in a specific form of physician profit sharing called split-pooling.

Split-pooling occurs when a group practice aggregates profits from one type of DHS that it provides to patients, such as diagnostic imaging services. Under a split-pooling model, the practice would divide these profits among the physicians who made those particular DHS referrals. The diagram below demonstrates this concept. Split-pooling is also known as distribution of profits on a service-by-service basis.

Prohibited Split-Pooling Profit Distribution Model



Group practices now have two lawful options to distribute DHS profits. The first option is to aggregate all profits from all designated health services and distribute them to all physicians in the practice (or to all physicians who meet the practice's eligibility criteria). Alternatively, if the group practice is large enough, the practice could divide its physicians into separate groups of physicians, called "components," then aggregate and distribute all DHS-referral profits by component. (A physician may not be in more than one component.) Regardless of the option chosen, DHS profits may not be distributed in an any manner that takes into account the volume or value of referrals made by a particular physician. For example, DHS profits may be distributed per capita (the same amount paid to each physician) to all physicians in the practice or component.

Stark does not prohibit all profit-sharing among physicians of a group practice. It regulates only profit sharing of DHS that are or can be billed to Medicare or Medicaid. CMS publishes the list of CPT/HCPCS codes for health care services and goods that qualify as designated health services at <https://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral#:~:text=The%20DHS%20categories%20defined%20by,certain%20other%20imaging%20services%3B%20and>. Additionally, Stark does not prohibit physicians from receiving a share of DHS profits that the physicians personally *performed*, and there are numerous other exceptions to the law. In certain cases, state law may be more restrictive than Stark. Consult your health care attorney if you have questions about your group practice's profit-sharing arrangement or the new changes to the Stark Law.



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