Changes to the Stark Law and Anti-Kickback Statute Address Physician Mental Health



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The federal Stark Law and Anti-Kickback Statute (AKS), which prohibit physician self-referrals and kickbacks, have changed for calendar year 2023. Notably, there is a new Stark Law exception and an AKS safe harbor for healthcare entities offering mental health programs to physicians, which includes counseling, mental health services, suicide prevention, and substance use disorder programs. The new Stark Law exception for physician-focused mental health programs requires a written policy and must be offered by a healthcare entity with a formal medical staff to all physicians in the geographic area served by the entity and without regard to the volume or value of referrals or other business generated by a physician for the entity. The new AKS safe harbor is similar to the Stark Law exception. However, the new AKS safe harbor also applies to non-physician clinicians, thereby permitting healthcare entities to provide mental health and behavioral health improvement or maintenance programs to physicians and other clinicians.

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