Structuring Medical Practices Under Stark And After Recent CMS Opinion

A Special Broadcast

Wednesday, August 25, 2021

12:30 PM EDT

and

5:30 PM EDT

Presented by:

Alan S. Gassman and Lester J. Perling

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Lester.Perling@nelsonmullins.com

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1. **This presentation does not qualify for Continuing Education Credit**

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Saturday, July 10th	**Free webinar from our firm**	**More Mathematics Of Estate Tax Planning 11:00 AM EDT**	**Play Recording**
Saturday, July 17th	**Free webinar from our firm**	**Hard Questions and Interesting Answers for Estate Planners 11:00 AM EDT**	**Play Recording**
Saturday, July 24th	**Free webinar from our firm**	**Estate Planning for Business Owners 11:00 AM EDT**	**Play Recording**
Saturday, August 7th	**Free webinar from our firm**	**The SCGRAT, the JEST, and the E Street Shuffle 11:00 AM EDT**	**Play Recording**
Saturday, August 14th	**Free webinar from our firm**	**Greatest Hits - Also Known As More Of The Same 11:00 AM EDT**	**Play Recording**
Saturday, August 21st	**Free webinar from our firm**	**Spousal Limited Access Trusts From A to Z 11:00 AM EDT**	**The recording is on Alan Gassman's YouTube**
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Session 5: How to Develop a Great Team
Session 6: Putting it All Together!
***Optional* Session 7:** Special hour for estate planners

Alan S. Gassman is a practicing lawyer and author based in Clearwater, Florida. Mr. Gassman is the founder of the firm Gassman Law Associates, P.A., which focuses on the representation of physicians, high net worth individuals, and business owners in estate planning, taxation, and business and personal asset structuring.

In-Person Seminar

Friday, October, 8th, 2021

12:00 PM to 5:00 PM EDT

Naples, FL

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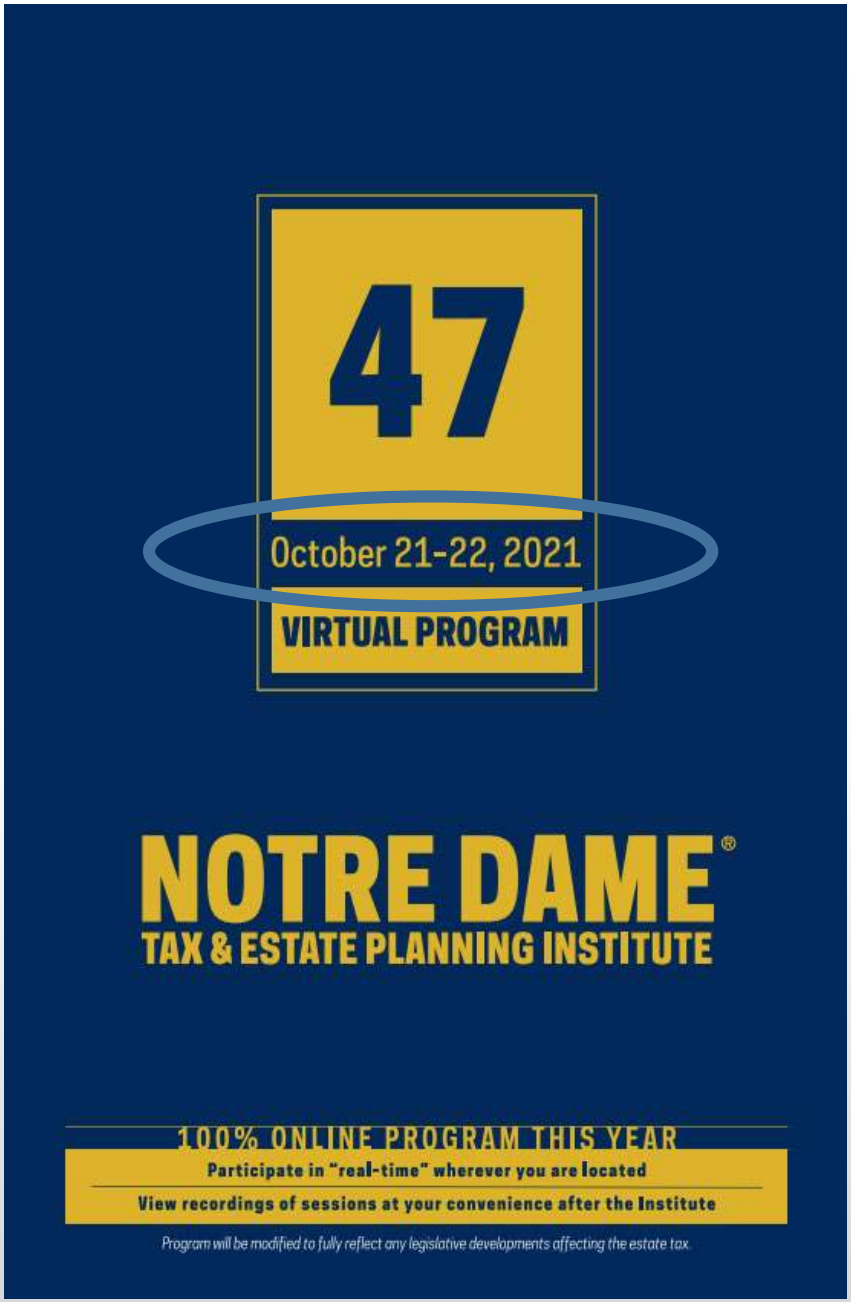

PROGRAM INFORMATION

The Institute will be held October 21 and 22, 2021. Due to the Covid-19 situation, this year's program will be presented exclusively online via Zoom classrooms. This program will use Eastern Time (same as New York City).

REGISTER ONLINE AT:

http://law.nd.edu/estateplanning

Continuing Education Certification
For those attendees desiring certification of attendance at the program, the Institute will issue certificates of attendance with respect to the sessions viewed in real-time via Zoom. Attendees may be required to confirm their real-time participation in these sessions by responding to prompts integrated into the online delivery system or otherwise. Due to practical limitations, the Institute will seek pre-approval, and report attendance, only with respect to those accrediting agencies for which there are a significant number of attendees seeking credit. The program will afford up to 16 actual hours of continuing education in this manner, including up to 2 hours of ethics. Each continuing education accrediting agency determines the number of continuing education hours (including ethics) it will accept for accreditation. While the Institute intends to make recordings of all sessions available to attendees after the Institute (enabling, for example, an attendee to later watch a session that conflicted with the "real time" session the attendee participated in), the Institute is unable to track or confirm post-Institute self-viewing of these recordings. Attendees are advised to contact their accrediting agency to determine how much, if any, continuing education credit is available for this post-Institute self-viewing.

Registration and Availability of Materials
All registration is done online at http://law.nd.edu/estateplanning, and should be done by September 4 to assure your place. The fee for the Institute is $795, which includes real-time participation via Zoom in one session per time period of the Institute, as well as access after the Institute to online video recordings of all sessions (access to these post-Institute recordings may be available for a limited time, and may be subject to technological limitations). In addition, your registration fee includes online access to electronic versions of the extensive course outlines, made available for download in advance of the Institute. Physical copies of these materials are available for an additional fee, which includes the delivery cost ($70 for a set of printed books, and $20 for a flash drive). In order to enable delivery of these optional physical materials to you prior to the Institute, you must register by September 4, 2021 (registrations after that date will still be accepted but will have access to the optional physical materials only while limited supplies last). Registrations are cancellable and refundable (less a $35 processing fee) until September 4, 2021.

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- Must have internet connection
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Technical support to assist with connecting to Zoom meeting sessions will be available on the day of the program. One week prior to the program an informational packet will be emailed containing basic logistic and technical information. Included will be a basic troubleshooting guide as well as direct contact information to gain assistance if required on the day of the program.

UNIVERSITY of NOTRE DAME

THE LAW SCHOOL

SLATs: How to Keep your SLATs from going Kersplat!

WEDNESDAY, OCTOBER 20, 2021

FROM 3:00 TO 5:00 PM EDT (60 MINUTES)

PRESENTED BY:

CHRISTOPHER DENICOLO AND BRANDON KETRON

CLICK HERE FOR MORE INFORMATION.

WEDNESDAY

OCTOBER 20, 2021 — **2 credit hours**

3:00 - 5:00 pm (120 mins): SLATs: How to Keep Your SLATs from going Kersplat!
~ Brandon Kentron & Chris Denicolo

THURSDAY

OCTOBER 21, 2021 — **7 credit hours - 1 hour ethics**

8:00 - 8:10 am:
Welcoming Ceremonies
~ Jerome M. Hesch

8:10-10:10 am | Session 1 (120 mins):
Current Developments of Importance to Estate Planners
~ Turney Berry, Stephanie Loomis-Price & Charles Redd

A — choose from the following sessions which are scheduled to run concurrently — **B**

A	B
10:20 - 11:20 am | Session 2A (60 mins): Structuring and Planning with Non-Grantor Trusts While an Individual is Living: It's Harder Than You Think *~ David Handler & Christiana Laza*	**10:20 - 11:20 am | Session 2B** (60 mins): GST Planning Flexibility and Common Mistakes *~ Raj Malviya & Nathan Brown*
11:30 am - 12:30 pm | Session 3A* (60 mins): Why Fiduciary Accounting May Be More Important Than You Think *~ Daniel Ebner & Ray Prather*	**11:30 am - 12:30 pm | Session 3B*** (60 mins): When Tax, Estate and Business Planning Collides with the interests of Family members: Ethics traps and tips *~ Robert Barton & Golnaz Yazdchi*
1:30 - 2:30 pm | Session 4A (60 mins): Trust Income Tax Issues That Are Confusing *~ Greg Gadarian*	**1:30 - 2:30 pm | Session 4B** (60 mins): Impact of Mortality Tables and §7520 Rates on Charitable Split Interest Trusts *~ Jason Havens*
2:40 - 3:40 pm | Session 5A (60 mins): More than creditor protection: Practical uses of a domestic asset protection trust for estate planning *~ George Karibjanian*	**2:40 - 3:40 pm | Session 5B** (60 mins): Freeze Planning for non-GST exempt trusts and QTIP trusts exposed to §§2044 and 2519 *~ Edward Morrow*
3:50 - 5:00 pm | Session 6A (70 mins): Diversity, Equity, and Inclusion Concerns For Your Practice *~ Susan Lipp (Moderator), Martin Shenkman, Kim Kamin, Yaser Ali & Melisa Seyuhn*	**3:50 - 5:00 pm | Session 6B** (70 mins): Evaluating Life Insurance Products *~ Rebecca Rosofsky & Lawrence Herman*

***ethics credits**

Does more than one session during a concurrent time period look interesting? No problem! All sessions will be recorded and we plan to make them available at no additional charge for online viewing by attendees after the Institute.

UNIVERSITY of NOTRE DAME

THE LAW SCHOOL

Tools and Strategies to Avoid Ethical Issues in Estate Planning

FRIDAY, OCTOBER 22, 2021

FROM 1:30 TO 2:30 PM EDT (60 MINUTES)

PRESENTED BY:

ALAN GASSMAN AND JONATHAN BLATTMACHR

CLICK HERE FOR MORE INFORMATION.

FRIDAY

OCTOBER 22, 2021 — **7 credit hours - 1 hour ethics**

A choose from the following sessions which are scheduled to run concurrently **B**

A	B
8:00 - 9:00 am | Session 7A (60 mins): Creative Planning Considering the Changing Political Landscape and Possible Tax Consequences – *Johnathan Blattmachr, Martin Shenkman & Sandra Glazier*	**8:00 - 9:00 am | Session 7B** (60 mins): Insecure about the Secure Act? How to draft retirement plans, beneficiary designations and estate planning documents – *Robert Kirkland*
9:10 - 10:10 am | Session 8A (60 mins): Existing planning techniques that will still work even if proposals are enacted – *Austin Bramwell & Jessica Soojian*	**9:10 - 10:10 am | Session 8B** (60 mins): Disposing of Qualified Deferred Compensation to Charity – *Christopher Hoyt*
10:20 - 11:20 am | Session 9A (60 mins): Preferred partnership freezes – *Steve Breitstone, Todd Angkatavanich & Joseph Medina*	**10:20 - 11:20 am | Session 9B** (60 mins): When Worlds Collide: Beneficial Interests in Trusts and Dissolution of Marriage – *Sharon Klein & Sandra Glazier*
11:30 am - 12:30 pm | Session 10A (60 mins): Partnership income tax traps – *Todd Steinberg*	**11:30 am - 12:30 pm | Session 10B** (60 mins): Cross-border families: Planning Tips – *John M. Fusco*
1:30 - 2:30 pm | Session 11A* (60 mins): Tools and Strategies to Avoid Ethical Issues in Estate Planning – *Alan Gassman & Jonathan Blattmachr*	**1:30 - 2:30 pm | Session 11B*** (60 mins): The Ethics of Multijurisdictional Practice When Crossing State Lines – *Roberta Mann*
2:40 - 3:40 pm | Session 12A (60 mins): Community Property Tips and Traps for Lawyers in Common Law states: Strategies for Migrating Clients – *Gerry Beyer*	**2:40 - 3:40 pm | Session 12B** (60 mins): The Uniform Basis Rules and Terminating Interests in Trusts Early – *F. Ladson Boyle*

3:50 - 4:50 pm \| Session 13 (60 mins): Tying it all together wrap-up – *Charles "Clary" Redd, Turney Berry & Stephanie Loomis-Price*

*ethics credits

Program is subject to change and will be modified to reflect any legislative developments affecting estate tax.

FREE WEBINAR!

Estate and Related Planning Today:

A Tasting Menu of the Upcoming 46th Annual Notre Dame Tax & Estate Planning Institute

Date and Time: August 31, 2021, 4 pm – 5 pm EST.

Course Description: This will be a fast-paced review of a wide range of practical planning ideas including Freeze planning for GST exposed trust and QTIP trusts; Installment sales to non-grantor trusts; Mathematics of charitable planning; Creative planning considering the changing political landscape; Beneficial interests in trusts and dissolution of marriage; Strategies to avoid ethical issues in estate planning; Diversity equity, and inclusion- practical tips; SLAT tips; ERC and PPP; Agreements that protect clients and advisors: inheritance agreements, siblings agreements, and agreements with caretakers; and more!! The Notre Dame Tax & Estate Planning Institute will be broadcast virtually in October. This webinar will give practitioners a preview of some of the many topics to be addressed at this year's Institute.

Now in its 47th year, the Notre Dame Tax & Estate Planning Institute virtually brings together 38 speakers from around the US to present on cutting-edge income and transfer tax issues, fiduciary accounting, diversity and inclusion, family law, and more. The Institute's blend of sophisticated income tax planning with estate planning concepts and techniques will add value to your practice.

Speakers: Jerome Hesch, Esq, Jonathan Blattmachr, Esq. Alan Gassman, Esq., Sandra Glazier, Esq., Christopher Denicolo, Esq., Todd Angkatavanich, Esq., Martin Shenkman, Esq. and perhaps others.

Sponsor: Interactive Legal

There are no professional advancement credits (CPE, CLE, etc.) offered for viewing this webinar (but there are for attending the Institute).

*This may constitute attorney advertising.

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Certificates and Follow Up Emails to Absentees
A recording and all materials will be posted to www.shenkmanlaw.com/webinars. There is a growing library of 100+ webinars you can access at any time. Also, see www.laweasy.com for a library of 150+ 10 minute planning videos.

The Follow-Up email will include a link to the digital certificate. You can simply click the My Certificate URL to have the certificate open in a new browser window. Note that first and last names with over 50 characters each will be cropped. We cannot reprint or modify certificates.

The handout will be available during the webinar on the webinar side panel. Just download it!
If you would like to download the materials in advance go to www.shenkmanlaw.com blog post on the home page.

A recording of the webinar will be posted with materials to www.shenkmanlaw.com/webinars within a week following the program.

ESTATE PLANNING COUNCIL OF BIRMINGHAM, INC.

HOT TOPICS IN ESTATE TAX AND CREDITOR PROTECTION

Thursday, November 4, 2021

from 8:00 AM to 10:00 AM CT

Presented by:

Alan Gassman

agassman@gassmanpa.com

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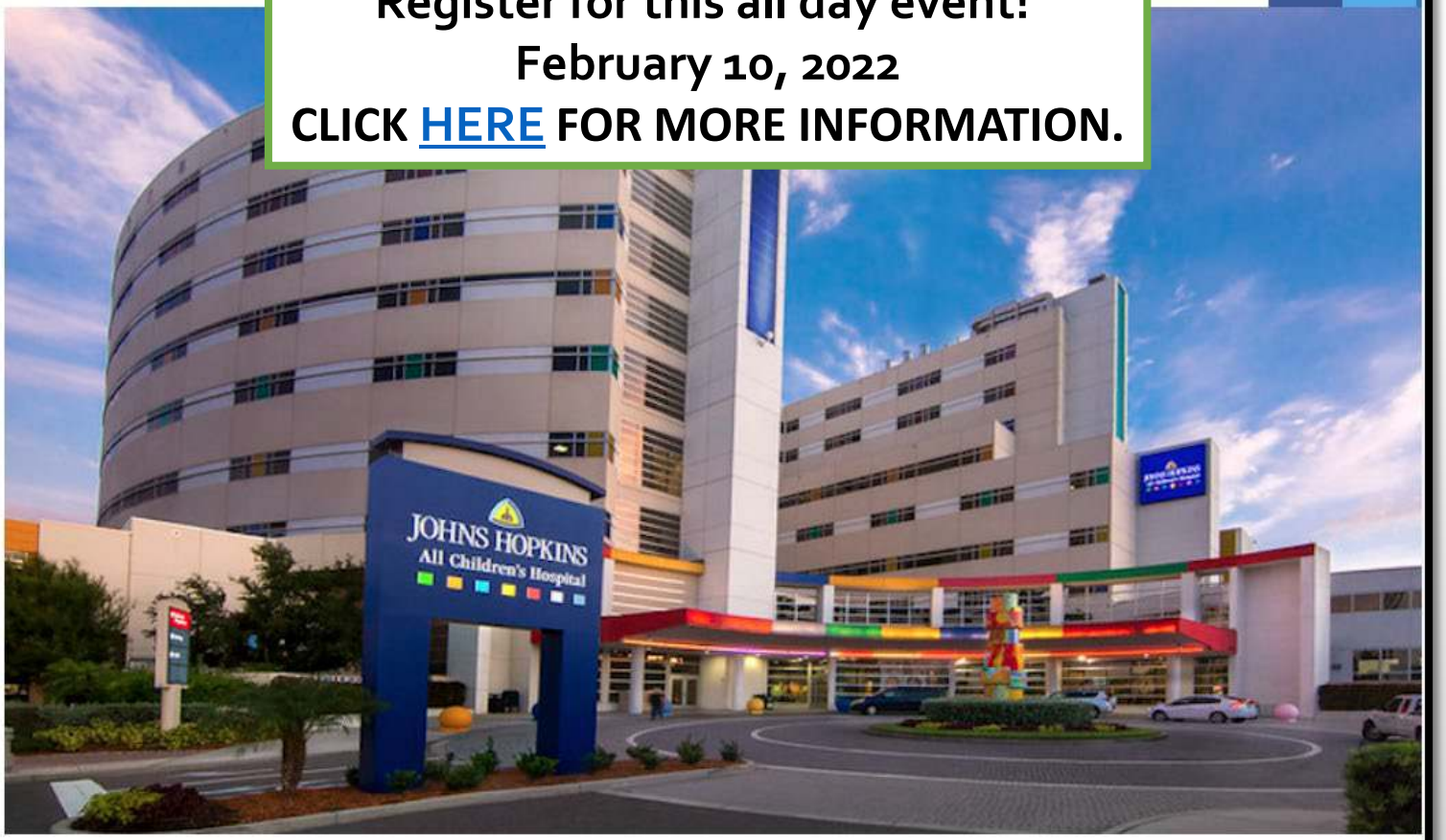


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THE NATIONAL LAW REVIEW

August 4, 2021
Volume XI, Number 216

Lester J. Perling

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Professional Biography:
Lester Perling is a board-certified health law attorney and is certified in healthcare compliance. He has extensive experience in compliance, enforcement, and reimbursement matters. Mr. Perling's practice focuses on advising healthcare providers of all types with regard to complying with federal and state laws, with emphasis on Stark law and reimbursement/billing compliance. He represents providers when they are the subject of government and private payer audits, including the appeals of audit findings, as well as federal and state administrative, civil, and criminal investigations pertaining to healthcare fraud and abuse. He also advises healthcare clients with regard to regulatory compliance in the context of transactions and business structures.

Mr. Perling has more than 10 years of experience as a healthcare executive. He held various administrative positions, including Chief Executive Officer, with investor-owned and community hospitals of all types.

He is a past adjunct faculty member at Florida International University, teaching health law in its Health Care MBA program. Mr. Perling has also taught courses at Florida Atlantic University and Nova Southeastern University School of Business and Entrepreneurship in provider group practice dynamics, fraud and abuse, and risk management.

Mr. Perling is a regular speaker on compliance, regulatory and enforcement matters for various state and national organizations, including the Health Care Compliance Association, American Health Lawyers Association, American Bar Association, and The Florida Bar.

ARTICLES IN THE NATIONAL LAW REVIEW DATABASE BY LESTER J. PERLING

» What the New CMS Advisory Opinion Means for Providers
(Posted On Thursday, July 15, 2021)

» New Stark Law and AKS Final Rules at Risk of Delay or Replacement Due to GAO Finding of Technical Deficiency and Biden Administration's Regulatory Hold Memo
(Posted On Tuesday, January 26, 2021)

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TRENDING LEGAL ANALYSIS

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By Jackson Lewis P.C.

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By Mintz

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By Hill Ward Henderson

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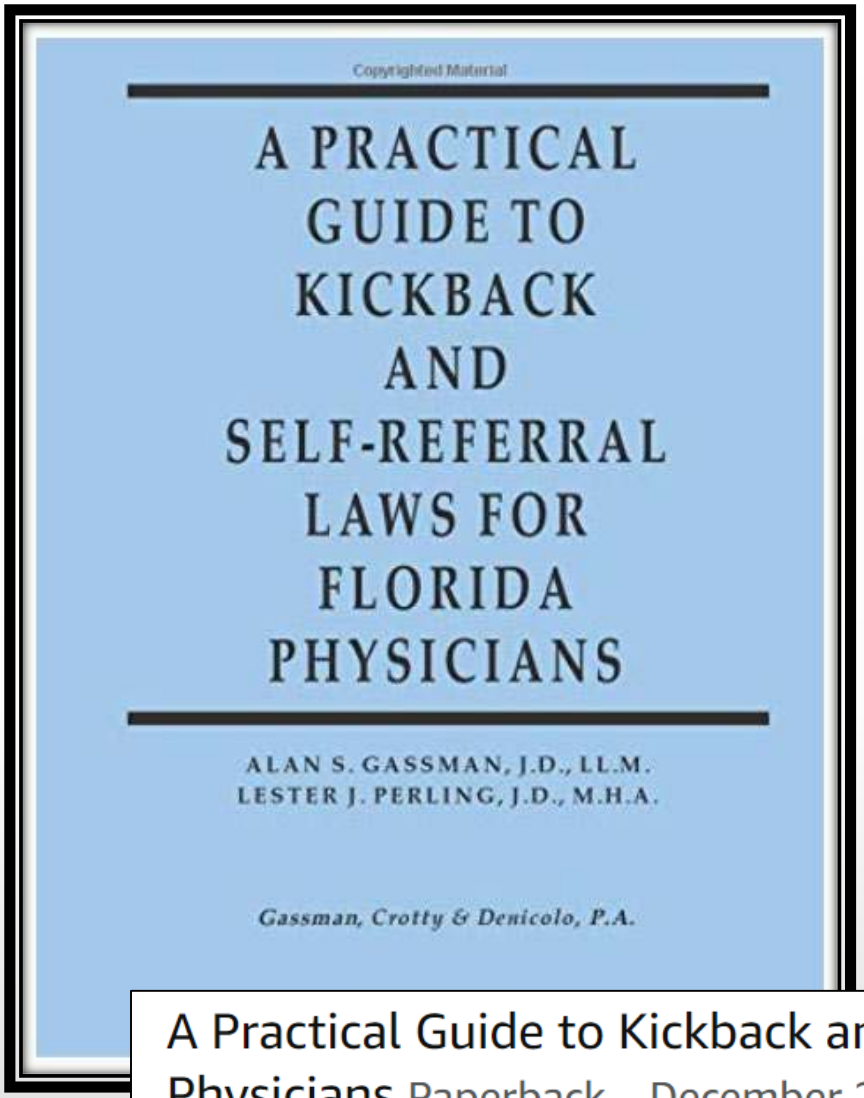
By Sheppard, Mullin, Richter & Hampton LLP

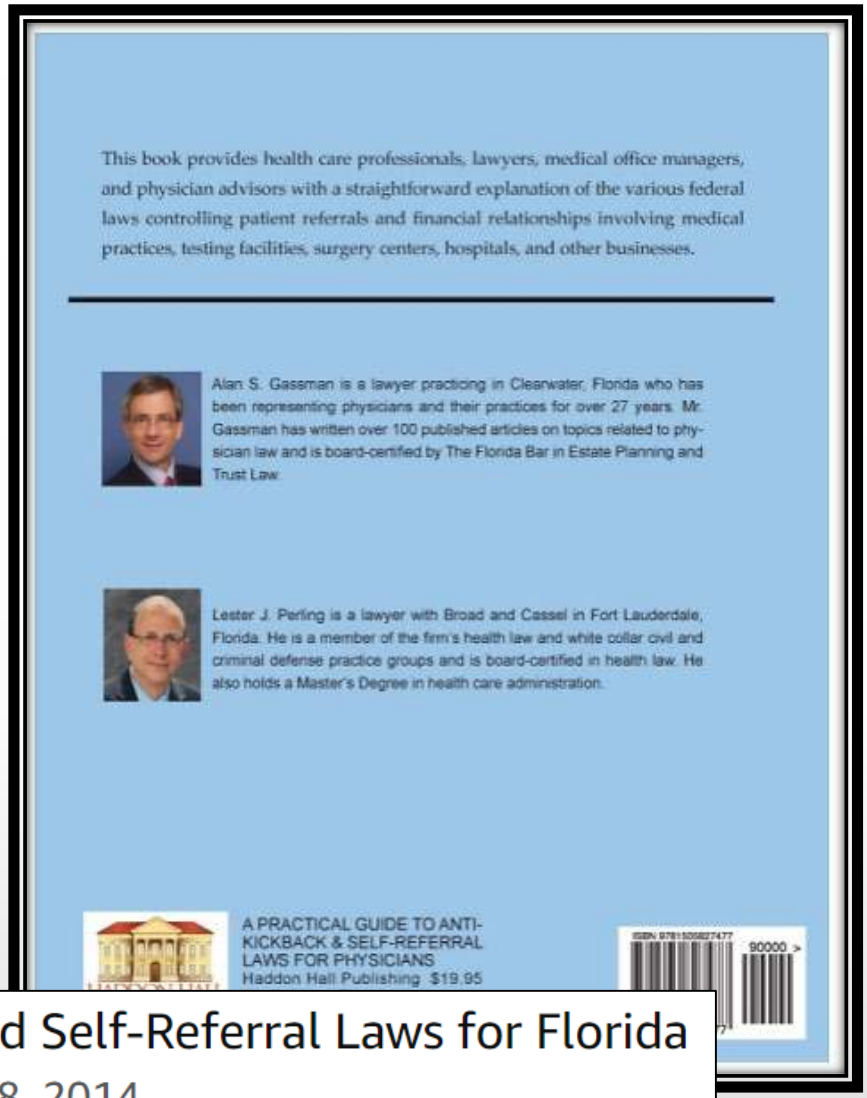
UPCOMING LEGAL EDUCATION EVENTS

Regulatory Roundup: CY 2022 PFS, OPPS, ASC Proposed Rules
Thursday, August 5, 2021

Medical Decision Making in 2020 and Beyond
Thursday, August 19, 2021

Challenges and Opportunities for A&D Companies in Entering Joint Ventures in Saudi Arabia and the UAE
Tuesday, September 28, 2021



A Practical Guide to Kickback and Self-Referral Laws for Florida Physicians Paperback – December 28, 2014

by Alan S Gassman (Author), Lester J Perling (Author)

★★★★★ 3 ratings

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New CMS Pronouncement on Parent/Subsidiary Medical Practice and Business Entities

Under the federal STARK Law (as to Medicare and quite possibly Medicaid) and the Florida Patient-Self Referral Act, a physician cannot refer patients (or even allow her patients to be treated) by his or her own Group Practice with respect to Designated Health Services unless the medical practice qualifies as a "Group Practice".

If the medical practice entity or entities do not qualify as a "Group Practice" then it is illegal and may be economically and practically devastating to allow a patient of a doctor who is an owner, employee, or independent contractor of a medical practice to receive any Designated Health Services from the practice whatsoever.

The Designated Health Services under the Stark Law and the Florida Patient-Self Referral Act are on the following page.


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The Designated Health Services under the Stark law and the Florida Patient-Self Referral Act

CATEGORY	FLORIDA PATIENT SELF-REFERRAL ACT	STARK LAW
Designated Health Services	Designated Health Services include: 1) clinical laboratory services 2) physical therapy services 3) radiation therapy services 4) diagnostic imaging services (not x-rays) 5) occupational therapy services 6) outpatient speech-language pathology services NOTE: Items 7 - 12 to the right under the Stark Law column are not regulated by the Florida Patient Self-Referral Act except as to the general prohibition with respect to "health" care items. **See Note to Right** →	Designated Health Services include: 1) clinical laboratory services 2) physical therapy services 3) radiation therapy services and supplies; radiology 4) other imaging services (includes x- rays) 5) occupational therapy services 6) outpatient speech-language pathology services Federal Designated Health Services also include: 7) durable medical equipment and supplies 8) parenteral and enteral nutrients, equipment, and supplies 9) prosthetics, orthotics, and supplies 10) home health services 11) outpatient prescription drugs 12) inpatient and outpatient hospital services However, these last six services are still "Health Care Items or Services" in Florida Statutes Section 456.053(5)(b), and thus still regulated.

New CMS Pronouncement on Parent/Subsidiary Medical Practice and Business Entities (CONTINUED)

To meet the definition of the "group practice" under this Act, all of the following requirements must be met, and if they are not met, then no doctor owning an interest in the practice can recommend or refer a patient to receive any designated health service from the practice:[44]

It is crucial for any medical group that provides "designated health services" to comply with these group practice rules, which require, among other things, that no physician in the group be directly or indirectly rewarded for the referral of "designated health services." Acceptable methods of allocating income earned from designated health services, as well as sample legal agreement language, can be found in the discussion of the Stark Law in Chapter I of our book.

[44] Fla. Stat. at § 456.053(3)(o)(3)(f).


a) Two or More Members "Legally organized as a partnership, professional corporation, or similar association"

The group must consist of two or more physicians "**legally organized" as a partnership, professional corporation, or similar association**. A member of a group is either an owner or an employee. [In order to be considered a "group"], this could consist of:

1) 2 owners
2) 2 employees, or
3) 1 owner and 1 employee

Note: Solo practitioners may also provide designated health care services to their own patients so long as the direct supervision requirements described below are met.


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What About a Subsidiary?

HHS has provided the following guidance on the use of one or more subsidiaries:

42 CFR § 411.355 -

(3) Billing of the service. They are billed by one of the following:

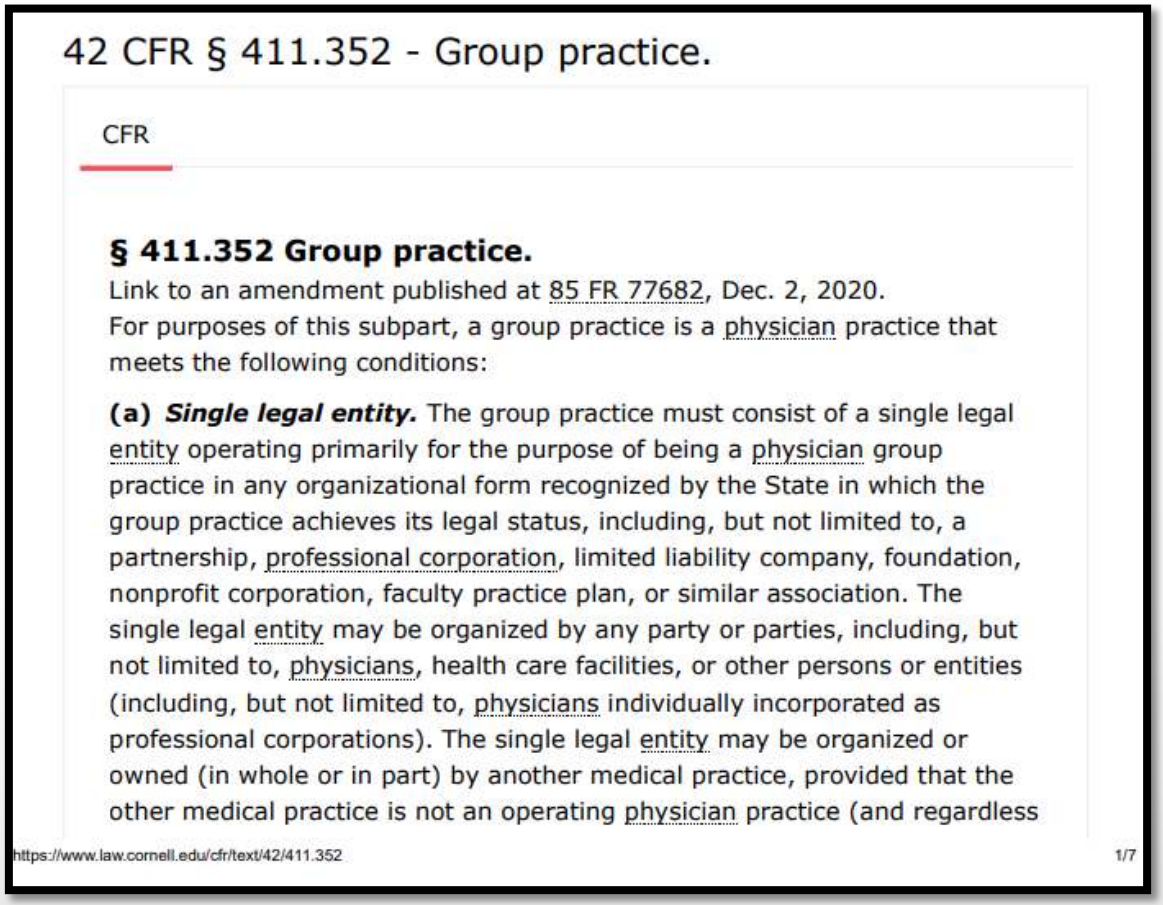
(i) The physician performing or supervising the service.

(ii) The group practice of which the performing or supervising physician is a member under a billing number assigned to the group practice.

(iii) The group practice if the supervising physician is a "physician in the group practice" (as defined at § 411.351) under a billing number assigned to the group practice.

(iv) An entity that is wholly owned by the performing or supervising physician or by that physician's group practice under the entity's own billing number or under a billing number assigned to the physician or group practice.

Also, subsidiaries are referenced in the group practice definition 42 CFR § 411.352 (a) …A group practice that is otherwise a single legal entity may itself own subsidiary entities.



42 CFR § 411.352 - Group practice.

CFR

§ 411.352 Group practice.

Link to an amendment published at 85 FR 77682, Dec. 2, 2020.

For purposes of this subpart, a group practice is a physician practice that meets the following conditions:

(a) ***Single legal entity.*** The group practice must consist of a single legal entity operating primarily for the purpose of being a physician group practice in any organizational form recognized by the State in which the group practice achieves its legal status, including, but not limited to, a partnership, professional corporation, limited liability company, foundation, nonprofit corporation, faculty practice plan, or similar association. The single legal entity may be organized by any party or parties, including, but not limited to, physicians, health care facilities, or other persons or entities (including, but not limited to, physicians individually incorporated as professional corporations). The single legal entity may be organized or owned (in whole or in part) by another medical practice, provided that the other medical practice is not an operating physician practice (and regardless

https://www.law.cornell.edu/cfr/text/42/411.352 1/7

of whether the medical practice meets the conditions for a group practice under this section). For purposes of this subpart, a single legal entity does not include informal affiliations of physicians formed substantially to share profits from referrals, or separate group practices under common ownership or control through a physician practice management company, hospital, health system, or other entity or organization. A group practice that is otherwise a single legal entity may itself own subsidiary entities. A group practice operating in more than one State will be considered to be a single legal entity notwithstanding that it is composed of multiple legal entities, provided that -

(1) The States in which the group practice is operating are contiguous (although each State need not be contiguous to every other State);

(2) The legal entities are absolutely identical as to ownership, governance, and operation; and

(3) 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.

(b) ***Physicians.*** The group practice must have at least two physicians who are members of the group (whether employees or direct or indirect owners), as defined at § 411.351.

(c) ***Range of care.*** Each physician who is a member of the group, as defined at § 411.351, 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.

(d) ***Services furnished by group practice members.***

(1) Except as otherwise provided in paragraphs (d)(3) through (6) of this section, substantially all of the patient care services of the physicians who are members of the group (that is, at least 75 percent of the total patient care services of the group practice members) 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:

(i) The total time each member spends on patient care services documented by any reasonable means (including, but not limited to, time cards, appointment schedules, or personal diaries). (For example,

if a physician practices 40 hours a week and spends 30 hours a week on patient care services for a group practice, the physician has spent 75 percent of his or her time providing patient care services for the group.)

(ii) Any alternative measure that is reasonable, fixed in advance of the performance of the services being measured, uniformly applied over time, verifiable, and documented.

(2) The data used to calculate compliance with this ***substantially all*** test and related supportive documentation must be made available to the Secretary upon request.

(3) The ***substantially all*** test set forth in paragraph (d)(1) of this section does not apply to any group practice that is located solely in a HPSA, as defined at § 411.351.

(4) For a group practice located outside of a HPSA (as defined at § 411.351), any time spent by a group practice member providing services in a HPSA should not be used to calculate whether the group practice has met the *substantially all* test, regardless of whether the member's time in the HPSA is spent in a group practice, clinic, or office setting.

(5) During the ***start up*** period (not to exceed 12 months) that begins on the date of the initial formation of a new group practice, a group practice must make a reasonable, good faith effort to ensure that the group practice complies with the *substantially all* test requirement set forth in paragraph (d)(1) of this section as soon as practicable, but no later than 12 months from the date of the initial formation of the group practice. This paragraph (d)(5) does not apply when an existing group practice admits a new member or reorganizes.

(6)

(i) If the addition to an existing group practice of a new member who would be considered to have relocated his or her medical practice under § 411.357(e)(2) would result in the existing group practice not meeting the *substantially all* test set forth in paragraph (d)(1) of this section, the group practice will have 12 months following the addition of the new member to come back into full compliance, provided that -

(A) For the 12-month period the group practice is fully compliant with the ***substantially all*** test if the new member is not counted as a member of the group for purposes of § 411.352; and

(B) The new member's employment with, or ownership interest in, the group practice is documented in writing no later than the beginning of his or her new employment, ownership, or investment.

(ii) This paragraph (d)(6) does not apply when an existing group practice reorganizes or admits a new member who is not relocating his or her medical practice.

(e) ***Distribution of expenses and income.*** The overhead expenses of, and income from, the practice must be distributed according to methods that are determined before the receipt of payment for the services giving rise to the overhead expense or producing the income. Nothing in this section prevents a group practice from adjusting its compensation methodology prospectively, subject to restrictions on the distribution of revenue from DHS under paragraph (i) of this section.

(f) ***Unified business.***

(1) The group practice must be a unified business having at least the following features:

(i) Centralized decision-making by a body 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

(ii) Consolidated billing, accounting, and financial reporting.

(2) Location and specialty-based compensation practices are permitted with respect to revenues derived from services that are not DHS and may be permitted with respect to revenues derived from DHS under paragraph (i) of this section.

(g) ***Volume or value of referrals.*** No physician who is a member of the group practice directly or indirectly receives compensation based on the volume or value of his or her referrals, except as provided in paragraph (i) of this section.

(h) ***Physician-patient encounters.*** Members of the group must personally conduct no less than 75 percent of the physician-patient encounters of the group practice.

(i) ***Special rule for productivity bonuses and profit shares.***

(1) 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

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

(2) 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 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:

(i) The group's profits are divided per capita (for example, per member of the group or per physician in the group).

(ii) 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.

(iii) 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.

(3) 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:

(i) The bonus is based on the physician's total patient encounters or relative value units (RVUs). (The methodology for establishing RVUs is set forth in § 414.22 of this chapter.)

(ii) 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.

(iii) Revenues derived from DHS are 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 practice.

(4) Supporting documentation verifying the method used to calculate the profit share or productivity bonus under paragraphs (i)(2) and (3) of this section, and the resulting amount of compensation, must be made available to the Secretary upon request.

[85 FR 77656, Dec. 2, 2020]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New CMS Pronouncement on Parent/Subsidiary Medical Practice and Business Entities (CONTINUED)

b) Full Range of Services

Each member (owner or employee) must furnish substantially the full range of patient care services that he or she routinely furnishes through the joint use of shared office space, facilities, equipment, and personnel. This prevents the practice from bringing in a specialist who only does one or two highly profitable procedures for the group and does not provide the "full range of patient care services" that the specialist would normally provide.

Note – Independent contractors need not satisfy the full range of services requirement.


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c) Substantially All Services

Substantially all of the patient care services of the physicians who are members of the group must be furnished through the group and billed in the name of the group. The "substantially all" requirement is generally equivalent to the "75% requirement" under the federal Stark Law, which requires that 75% of all patient encounters by physician group members must be with the group's patients. All amounts received must be treated as receipts of the group.

This prevents groups from having a large number of part-time doctors who are essentially moonlighting for the group and primarily working in other practices.

For example, two doctors working full time in a group practice might be able to bring in one other doctor who only spends 25% of his time in the practice because 100% + 100% + 25% equals 225% and 225% divided by 3 equals 75%. However, this practice could not bring in a fourth doctor who only spent 25% of his time at the practice because the 75% requirement would not be met.

(100 + 100 + 25 + 25 = 250 | 250 ÷ 4 = 62.5%)


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New CMS Pronouncement on Parent/Subsidiary Medical Practice and Business Entities (CONTINUED)

INDEPENDENT CONTRACTORS DON'T COUNT – Physicians or physician groups who are hired to provide services to patients as independent contractors do not count for purposes of the 75% test if they truly qualify as INDEPENDENT CONTRACTORS.

THE 75% ENCOUNTER REQUIREMENT

Most advisors are not aware of a second "75% requirement" whereby physician members of the group, meaning employees and/or owners, must personally conduct no less than 75% of the physician-patient encounters of the group. It is a separate, overlapping, but slightly different requirement. This means that no more than 25% of physician-patient encounters can be with an independent contractor.

d) Predetermined Formulas

The overhead expenses and income must be distributed ac- cording to methods that are agreed upon before the receipt of payment for the services. In other words, the formula for sharing income has to be agreed to before the income is actually earned. See (e) below.

This requirement will be refined effective January 1, 2022.

New CMS Pronouncement on Parent/Subsidiary Medical Practice and Business Entities (CONTINUED)

e) Compensation For DHS Cannot Be Directly Based Upon Volume or Value of Referrals

Most importantly, no physician who is a member of the group can directly receive compensation based upon the value or volume of his referrals with respect to Designated Health Services ("DHS").

Note –

DHS revenues are commonly allocated in predetermined percentages (such as by percentage of ownership of the entity), pro rata to professional service income RVU's, number of patient visits or other criteria not directly or indirectly with reference to the value or volume of referrals for DHS.

Exception for Incident to Services

Certain services provided in a medical practice will not be regulated in the same way as is required for Designated Health Services, under the Stark Law and may be performed by or under the supervision of a physician, with the revenues or net income allocated to a physician who orders and supervises the applicable service.

Example –

Infusion of oncology drugs or antibiotics will normally be considered to be an "incident to service," where the doctor is required to directly supervise the non-physician staff and may need to be present in the office suite during administration of the treatment, depending upon what it is.

A CMS website explanation of "incident to" services is as follows -

Background

The intent of this article is to clarify "incident to" services billed by physicians and non-physician practitioners to carriers. "Incident to" services are defined as those services that are furnished incident to physician professional services in the physician's office (whether located in a separate office suite or within an institution) or in a patient's home.

These services are billed as Part B services to your carrier as if you personally provided them, and are paid under the physician fee schedule.

Note: "Incident to" services are also relevant to services supervised by certain non-physician practitioners such as physician assistants, nurse practitioners, clinical nurse specialists, nurse midwives, or clinical psychologists. These services are subject to the same requirements as physician-supervised services. Remember that "incident services" supervised by non-physician practitioners are reimbursed at 85 percent of the physician fee schedule. For clarity's sake, this article will refer to "physician" services as inclusive of non-physician practitioners.

To qualify as "incident to," services must be part of your patient's normal course of treatment, during which a physician **personally performed an initial service** and remains **actively**


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involved in the course of treatment. You do not have to be physically present in the patient's treatment room while these services are provided, but you must provide **direct supervision**, that is, you must be present in the office suite to render assistance, if necessary. The patient record should document the essential requirements for incident to service.

More specifically, these services must be all of the following:

- An integral part of the patient's treatment course;
- Commonly rendered without charge (included in your physician's bills
- Of a type commonly furnished in a physician's office or clinic (not in an institutional setting); and
- An expense to you.

Examples of qualifying "incident to" services include cardiac rehabilitation, providing non-self-administrable drugs and other biologicals, and supplies usually furnished by the physician in the course of performing his/her services (for example, gauze, ointments, bandages, and oxygen).

The following paragraphs discuss the various care settings, which are important to note because the processes for billing vary somewhat depending on the care site.

Your Office

In your office, qualifying "incident to" services must be provided by a caregiver whom you directly supervise, and who represents a direct financial expense to you (such as a "W-2" or leased employee, or an independent contractor).

You do not have to be physically present in the treatment room while the service is being provided, but you must be present in the immediate office suite to render assistance if needed. If you are a solo practitioner, you must directly supervise the care. If you are in a group, any physician member of the group may be present in the office to supervise.

Hospital or SNF

For inpatient or outpatient hospital services and services to residents in a Part A covered stay in a SNF, the bundling provision (§1862 (a)(14) of the Social Security Act (the Act) for hospitals, and §1862(a)(18) of the Act for SNFs) provides that payment for all services are made to the hospital or SNF by a Part A Medicare Administrative Contractor (MAC) (except for certain professional services personally performed by physicians and other allied health professionals). Therefore, incident to services are not separately billable to the Part B MAC or payable under the physician fee schedule.

Offices in Institutions

In institutions including SNF, your office must be confined to a separately identifiable part of the facility and cannot be construed to extend throughout the entire facility. Your staff may provide service incident to your service in the office to outpatients, to patients who are not in a Medicare covered stay or in a Medicare certified part of a SNF. If your employee (or contractor) provides

services outside of your "office" area, these services would not qualify as "incident to" unless you are physically present where the service is being provided. One exception is that certain chemotherapy "incident to" services are excluded from the bundled SNF payments and may be separately billable to the carrier.

In Patients' Homes

In general, you must be present in the patient's home for the service to qualify as an "incident to" service. There are some exceptions to this direct supervision requirement that apply to homebound patients in medically underserved areas where there are no available home health services only for certain limited services found in Pub 100-02, Chapter 15 Section 60.4 (B). In this instance, you need not be physically present in the home when the service is performed, although general supervision of the service is required. You must order the services, maintain contact with the nurse or other employee, and retain professional responsibility for the service. All other incident to requirements must be met. A second exception applies when the service at home is an individual or intermittent service performed by personnel meeting pertinent state requirements (for example, nurse, technician, or physician extender), and is an integral part of the physician's services to the patient).

Ambulance Service

Neither ambulance services nor EMT services performed under your telephone supervision are billable as "incident to" services.

Additional Information

To provide additional clarity, we present the following scenarios:

Must a supervising physician be physically present when flu shots, EKGs, Laboratory tests, or X-rays are performed in an office setting in order to be billed as "incident to" services?

These services have their own statutory benefit categories and are subject to the rules applicable to their specific category. They are not "incident to" services and the "incident to" rules do not apply.

Can anti-coagulation monitoring be provided "incident to" a physician's services in an office?

Yes, if the requirements are met, i.e., the services are part of a course of treatment during which the physician personally performs the initial service and is actively involved in the course of treatment, is physically present in the immediate office when services are rendered by the employee, and the service represents an expense to the physician or other legal entity that bills for the service.

If the treating physician (Doctor X) refers a patient to an anti-coagulation monitoring clinic, can Doctor X bill these services as "incident to?"

No, because the services are not being provided by an employee under supervision of Doctor X.

Related Change Request #: N/A **MLN Matters Number: SE0441**

Can the supervising physician (Doctor Y) at the anti-coagulation monitoring clinic (a physician group) bill the services as "incident to" if Doctor Y directly supervises those services at the clinic?

No, because Doctor Y is not treating the patient for the underlying condition. However, If Doctor Y receives a referral from Dr. X, and Dr. Y performs an initial evaluation of the patient and then orders and supervises the services, they may be billed by Doctor Y incident to her initial service.

If you have any questions, please contact your MAC at their toll-free number. That number is available at **http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNMattersArticles/index.html** under - How Does It Work.


New CMS Pronouncement on Parent/Subsidiary Medical Practice and Business Entities (CONTINUED)

January 1, 2022 Law Change –

Please note that effective January 1, 2022, all DHS will have to be pooled together and allocated together, for example, a practice today may share MRI income pro rata to productivity and physical therapy income pro rata to ownership. Effective January 1, 2022, all MRI and PT income would have to be allocated in exactly the same way and proportions.

The above constitute the "group practice definition" requirements.

In addition to these requirements a Group Practice that bills for Designated Health Services must comply with the following requirements:

Supervision Requirement

Any DESIGNATED HEALTH SERVICE must be performed under the "direct supervision" of the group practice, meaning that the service must be performed by a physician who is a member of the group or that a physician may need to be present in the office suite at the time the service is performed to satisfy MEDICARE rules.

It must be performed by a physician or by the referring physician, who is a member of the group, meaning an employee or an owner or someone else in the group who is supervised by a physician in the group (which could be an independent contractor), so long as the services are supervised in accordance with Medicare billing records.

New CMS Pronouncement on Parent/Subsidiary Medical Practice and Business Entities (CONTINUED)

Supervision Requirement (Cont.)

Under Florida Law, one of the following individuals must be present in the office suite if and when the service is performed by a non-physician:

1) the referring physician
2) a physician who is a member of the group for MEDICARE purposes

MEDICARE laws sometimes require this –

For example, MEDICARE rules do not require that a physician be present while a patient is receiving a chest x-ray, but do require that a physician be present while a patient is receiving an MRI with contrast.


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New CMS Pronouncement on Parent/Subsidiary Medical Practice and Business Entities (CONTINUED)

FLORIDA LAW IS STRICTER –

Under Florida law, a designated health service can only be provided to a patient while a physician is present in the office suite at the time the service is performed.

Under Florida law, "present in the office suite" means that a physician is actually physically present at the time the Designated Health Services are rendered, although brief unexpected absences and routine absences of short duration that occur during periods of time that the healthcare provider is otherwise scheduled and ordinarily expected to be present may be permitted. [45]

45 Fla. Stat. at § 456.053(3)(e), (3)(p).


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f) Florida Law 2 - DHS Services May Only Be Provided to Patients of the Practice, Except for the 15% Diagnostic Outside Referral Exception - this is not a federal or STARK Law requirement.

As an exception to the above Florida rule, a group practice may accept referrals for diagnostic imaging from physicians outside of the group for up to 15% of the group's patients, so long as the diagnostic imaging exception requirements described in the next section are satisfied. The Stark Law has no specific prohibition against the acceptance of outside referrals.

Because blood labs are considered "designated health services" under the Florida Patient Self-Referral Act, the physician cannot directly receive payment for ordering lab tests. Although a physician may order a blood lab test and read the results of the test, the physician cannot receive direct payment for doing so, other than payment the physician already receives for treating the patient.


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Federal and State Anti-Kickback Statute

Anti-Kickback Statute (AKS)

> **Section 1320a-7b(b), makes it a crime to knowingly and willfully offer, pay, solicit, or receive any remuneration directly or indirectly to induce or reward patient referrals or the generation of business involving any item or service reimbursable by a Federal health care program.**
>
> Government agencies, including the Department of Justice, the Department of Health & Human Services Office of Inspector General (OIG), and the Centers for Medicare & Medicaid Services (CMS), are charged with enforcing these laws.

It is illegal to refer a patient for services in exchange for remuneration (compensation) of any kind, unless an exception applies.

Many other activities implicate the Anti-Kickback Statutes and can place medical providers and practices in harm's way.

https://oig.hhs.gov/compliance/physician-education/01laws.asp

FLORIDA PATIENT BROKERING ACT

A. SUMMARY OF THE FLORIDA PATIENT BROKERING ACT

The Patient Brokering Act is a criminal statute which specifically prohibits any health care provider or health care facility from giving or receiving any form of remuneration in exchange for referrals, regardless of the source of payment for the applicable service or product.

The Florida Legislature passed the Patient Brokering Act after learning that various mental health and substance abuse hospitals were making payments to individuals for the referral of patients identified in Alcoholics Anonymous meetings, homeless shelters, and other similar environments. In these situations, the hospitals had an agreement with "patient brokers," who would "screen" patients at AA meetings and other events to determine if they had insurance coverage. Individuals with cover- age would be referred to a facility, and in turn, the facility would pay the patient broker a fee. Sometimes these facilities leased hospital rooms, and the hospital would receive a rent payment and the entrepreneurial treatment entity would keep significant profits.

Florida Patient Brokering Statute: Florida Statutes Section 817.505

(1) It is unlawful for any person, including any health care provider or health care facility, to:

> (a) Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage to or from a health care provider or health care facility;
>
> (b) Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirect- ly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring patients or patronage to or from a health care provider or health care facility;
>
> (c) Solicit or receive any commission, bonus, rebate, kickback, or bribe, directly or indirect- ly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgement of treatment from a health care provider or health care facility; or
>
> (d) Aid, abet, advise, or otherwise participate in the conduct prohibited under paragraph (a), paragraph (b), or paragraph (c).


Advisory Opinion
No. CMS-AO-2021-01

The original can be found at this link:

https://www.cms.gov/files/document/cms-ao-2021-01.pdf

Re: Advisory Opinion No. CMS-AO-2021-01

Dear [name redacted]:

We write in response to your request for an advisory opinion on behalf of [name redacted] ("Requestor" or "Group Practice") regarding how the regulation at 42 C.F.R. § 411.352(a) limits the provision of designated health services by a group practice. Specifically, you asked whether a physician practice would fail to qualify as a "group practice" for purposes of section 1877(h)(4) of the Social Security Act (the "Act") and 42 C.F.R. § 411.352 if it furnishes designated health services through a wholly-owned subsidiary entity that is a physician practice but does not itself qualify as a group practice.

You certified that the information provided in your request, including all supplementary materials and documentation, is true and correct and constitutes a complete description of the relevant facts. In issuing this opinion, we relied solely on the facts and information presented to us. We did not undertake an independent investigation of this information. If material facts were not disclosed or were misrepresented, this advisory opinion is without force and effect.

Based on the facts certified in your request for an advisory opinion and supplemental submissions, we conclude that furnishing designated health services through a wholly-owned subsidiary entity that is a physician practice but does not itself qualify as a group practice under 42 C.F.R. § 411.352 would not preclude Requestor's compliance with the requirement at 42 C.F.R. § 411.352(a) that a group practice is a single legal entity.

I. FACTUAL BACKGROUND

Requestor is a [state redacted] professional limited liability company operating as a physician practice in the state of [state redacted] ("Group Practice State"). [name redacted] (Owner) is the sole owner of Requestor. Requestor furnishes health care services to patients in Group Practice State, including designated health services to Medicare beneficiaries. Requestor certified that it currently satisfies all the requirements of 42 C.F.R. § 411.352 to qualify as a group practice for purposes of the physician self-referral law.

Owner is also the sole owner of [name redacted] ("Subsidiary A"), a [state redacted] professional corporation operating as a physician practice in the state of [state redacted] (State A) and [name redacted] ("Subsidiary B"), an [state redacted] professional limited liability company operating as a physician practice in the state of [state redacted] (State

B). Group Practice, Subsidiary A, and Subsidiary B are managed by [name redacted] (Manager). Requestor is proposing to acquire Subsidiary A and Subsidiary B from Owner. Requestor certified that, following the acquisition: (1) Requestor would be the sole owner of Subsidiary A and Subsidiary B (collectively, the "Subsidiaries"); (2) all clinical employees and contractors of the Subsidiaries would become employed or contracted by Requestor; (3) all material assets and business functions of the Subsidiaries would be transferred to Requestor or Manager; and (4) Manager would continue to provide management and other non-clinical services to Requestor and the Subsidiaries.

Following the acquisition of the Subsidiaries, Requestor would continue to furnish health care services, including designated health services, to its patients directly and through the Subsidiaries. Requestor certified that, because many payors and health plans prohibit assignment of their payor contracts to a successor organization, the Subsidiaries would continue to remain credentialed and contract directly with payors and health plans, and use billing numbers assigned to the Subsidiaries to bill such payors and health plans for items and services furnished to their enrollees. The Subsidiaries would also remain enrolled in Medicare under tax identification numbers assigned to the Subsidiaries, and use billing numbers assigned to them as participating suppliers to bill Medicare for items and services, including designated health services, furnished to beneficiaries.

Patients to whom health care services are furnished by the Subsidiaries would be considered patients of the Group Practice. The health care services furnished to Group Practice patients would be furnished or supervised by clinical personnel that are employed or contracted by Requestor and designated to work at the Group Practice State office site, the State A office site, or the State B office site. Manager would provide all nonclinical support personnel to the Group Practice and the Subsidiaries under the terms of the management agreement among the parties. All revenues of the Subsidiaries would be remitted to and be treated as revenues of the Group Practice.

Requestor certified that it would meet all other requirements to qualify as a group practice under section 1877(h)(4) of the Act and 42 C.F.R. § 411.352, including, but not limited to, the requirements that Requestor is a unified business with centralized decision making and that all revenues received by and expenses incurred by Requestor, Subsidiary A, and Subsidiary B are treated as revenues and expenses of Requestor.

II. LEGAL ANALYSIS

A. Law and Regulations

Section 1877 of the Act and the regulations at 42 C.F.R. § 411.350 et seq. (collectively, the "physician self-referral law") prohibit a physician from making a referral for certain designated health services payable by Medicare to an entity with which the physician (or an immediate family member of the physician) has a financial relationship unless all requirements of an applicable exception are satisfied. The physician self-referral law also prohibits the entity from filing claims with Medicare (or billing another individual, entity,

or third party payer) for any improperly referred designated health services.

There are numerous statutory and regulatory exceptions to the physician self-referral law. One of these exceptions, the exception for in-office ancillary services, is available to a physician practice consisting of two or more physicians only if the physician practice qualifies as group practice.[1] Section 1877(h)(4) of the Act defines the term "group practice," and the regulations at 42 C.F.R. § 411.352 set forth the requirements for qualifying as a group practice for purposes of the physician self-referral law. Under 42 C.F.R. § 411.352(a), a group practice must consist of a single legal entity operating primarily for the purpose of being a physician group practice.[2] A group practice that is otherwise a single legal entity may itself own subsidiary entities through which it provides services to the group practice.

In an August 1995 final rule (the "1995 Final Rule"),[3] we addressed qualification as a group practice in the context of a professional corporation that owns subsidiaries for the provision of equipment, billing services, or ancillary services. Although the requirement that a group practice must consist of a single legal entity precludes two or more groups of physicians each organized as separate legal entities from qualifying as a group practice, we interpreted the statute to permit a single group practice (that is, one single group of physicians) to own other legal entities for the purpose of providing services to the group practice.[4] We noted that the exception for in-office ancillary services at section 1877(b)(2)(B) of the Act appears to anticipate that a group practice may wholly own separate legal entities for billing or providing ancillary services. In a 2001 final rule with comment period ("Phase I"),[5] we responded to a similar inquiry requesting clarification whether a group practice could own subsidiaries that, for example, own real estate or equipment, provide billing services, or operate ancillary services.[6] There, citing the 1995 Final Rule, we reiterated our belief that the statute does not preclude a single group practice from owning other legal entities for the purposes of providing services to the

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[1] *See* 63 Fed. Reg. 1659, 1685-86 (Jan. 9, 1998).

[2] Using form CMS-855B, a physician group practice enrolls in the Medicare program as a unique supplier, referred to as a "clinic/group practice" for enrollment purposes. If an enrolling organization provides services as more than one type of supplier (for example, the legal entity is a clinic/group practice and also an ambulatory surgical center), it must submit a separate application for each type of supplier. See https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/Downloads/cms855b.pdf. A clinic/group practice may bill the Medicare program for services provided to beneficiaries by a physician or practitioner who has reassigned to the practice his or her right to bill and receive payment from the Medicare program using form CMS-855R. See https://www.cms.gov/Medicare/CMS-Forms/CMS-Forms/Downloads/cms855r.pdf. Most physician services provided to Medicare beneficiaries and billed by a physician or clinic/group practice are paid according to the Medicare Physician Fee Schedule, with special rules for billing and payment of physician services that are radiology services, laboratory services, drugs, and preventive and services and screening tests. See Pub. 100-04, Medicare Claims Processing Manual, Chapter 12, Section 10 at https://www.cms.gov/Regulations-and-Guidance/Guidance/Manuals/Downloads/clm104c12.pdf.

[3] 60 Fed. Reg. 41914 (Aug. 14, 1995).

[4] *Id.* at 41935-36.

[5] 66 Fed. Reg. 876 (Jan. 4, 2001).

[6] *Id.* at 899.

group practice.[7] In both the 1995 Final Rule and Phase I, we cited the example of a wholly-owned laboratory facility that provides laboratory services to a group practice, but did not provide an exhaustive list of the types of services a wholly-owned subsidiary may provide to a group practice.[8]

B. Analysis

The question presented by Requestor is whether it could satisfy the requirement at 42 C.F.R. § 411.352(a) that a group practice must consist of a single legal entity if Requestor furnishes designated health services through a wholly-owned legal entity that operates as a physician practice but does not itself qualify as a group practice. Our analysis focuses on whether the regulation at 42 C.F.R. § 411.352(a) precludes a group practice from furnishing services (including designated health services) through a wholly-owned subsidiary physician practice.

As we explained in the preambles to the 1995 Final Rule and Phase I, a group practice may furnish services to group practice patients, including designated health services, through wholly-owned subsidiaries. The regulation at 42 C.F.R. § 411.352(a) expressly states that a group practice that is otherwise a single legal entity may itself own subsidiary entities. It does not dictate or limit the types of subsidiary entities that a group practice may own. The example in the 1995 Final Rule and Phase I of a laboratory facility that is wholly-owned by a group practice and provides services to group practice patients is illustrative only, and we do not consider it to preclude a group practice from furnishing other types of services to its patients through other types of wholly-owned subsidiaries. However, in order for the group practice to satisfy the requirement at 42 C.F.R. § 411.352(a) that it is a single legal entity operating primarily for the purpose of being a physician group practice, it must primarily provide services of the type provided by a supplier that is enrolled in Medicare as a clinic/group practice and billed to Medicare in accordance with the claims processing instructions for physician services in the Medicare Claims Processing Manual (Pub. 100-04).[9]

Requestor certified that, following its acquisition of the Subsidiaries, all clinical employees and contractors of the Subsidiaries would become employed or contracted by Requestor. Such personnel would be designated to work at either the Group Practice State office site, the State A office site, or the State B office site. Although Subsidiary A and Subsidiary B would maintain their respective enrollments in Medicare, remain credentialed and contract directly with payors and health plans, and use billing numbers assigned to the Subsidiaries to bill Medicare and other payors and health plans for services furnished to their beneficiaries and enrollees, all revenues and expenses of the Subsidiaries would be treated as revenues and expenses of Group Practice.

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[7] *Id.*
[8] 60 Fed. Reg. 41936; 66 Fed. Reg. 899.
[9] See footnote 2 *supra*.

Based on the facts certified by Requestor, we conclude that the regulation at 42 C.F.R. § 411.352(a) and the related interpretation of the physician self-referral law in the 1995 Final Rule and Phase I do not preclude Requestor from qualifying as a single legal entity if Requestor furnishes designated health services through the Subsidiaries, provided that Requestor is the sole owner of the Subsidiaries. We note that, as wholly-owned subsidiaries of Requestor—which is an operating physician practice—neither of the Subsidiaries would qualify as a group practice for purposes of the physician self-referral law.

III. CONCLUSION

Based on the facts certified in your request for an advisory opinion and supplemental submissions, we conclude that furnishing designated health services through a wholly-owned subsidiary entity that is a physician practice but does not itself qualify as a group practice under 42 C.F.R. § 411.352 would not preclude Requestor's compliance with the requirement at 42 C.F.R. § 411.352(a) that a group practice is a single legal entity. We express no opinion regarding whether any other aspect of your current organizational structure or operations, or whether your proposed acquisition of Subsidiary A and Subsidiary B, if effectuated, would comply with any other provision of section 1877 of the Act or 42 C.F.R. Part 411, Subpart J. We also express no opinion regarding whether any designated health services referred by physicians employed or contracted by Requestor and furnished by Subsidiary A or Subsidiary B would satisfy the requirements of the exception for in-office ancillary services at section 1877(b)(2) of the Act and 42 C.F.R. § 411.355(b).

IV. LIMITATIONS

The limitations applicable to this opinion include the following:

- This advisory opinion is issued to the requestor of this opinion. The U.S. Department of Health and Human Services will not impose sanctions under section 1877(g) of the Social Security Act with respect to Requestor and all individuals and entities that are parties to the arrangement described therein. Individuals and entities other than the parties to the arrangement may rely on this advisory opinion as an illustration of the application of the physician self-referral law and regulations to the specific facts and circumstances described in the advisory opinion in accordance with 42 C.F.R. § 411.387(c).

- This advisory opinion may not be introduced into evidence in any matter involving an entity or individual that is not a requestor of this opinion, except as permitted under 42 C.F.R. § 411.387(a)(2) and (b).

- This advisory opinion is applicable only to the statutory and regulatory provisions specifically noted above. No opinion is expressed or implied herein with respect to the application of any other Federal, state or local statute, rule, regulation,

ordinance, or other law that may be applicable to Requestor, including, without limitation, the Federal anti-kickback statute, section 1128B(b) of the Act (42 U.S.C. §1320a-7b(b)) and Federal or State law governing not-for-profit corporations or entities.

- This advisory opinion will not bind or obligate any agency other than the U.S. Department of Health and Human Services.
- CMS reserves the right to reconsider the questions involved in this advisory opinion and, for good cause (as defined at 42 C.F.R. § 411.382 (a)(2)), may rescind or revoke this opinion.
- This advisory opinion is limited in scope to the specific arrangement described in this letter.
- No opinion is expressed herein regarding the liability of any party under the False Claims Act or other legal authorities for any improper billing, claims submission, cost reporting, or related conduct.

This opinion is also subject to any additional limitations set forth at 42 C.F.R. §§411.370 through 411.389.

Sincerely,

Carol W. Blackford
Acting Deputy Director
Center for Medicare

New CMS Pronouncement on Parent/Subsidiary Medical Practice and Business Entities

By Alan Gassman (CONTINUED)

1) Safest - All operations are under one entity that bills Medicare under one tax payer identification number and exposes all operations to malpractice and other liabilities.

2) Also Safe - Parent company owned by the doctors and/or others has tax identification and Medicare number used for billing all Medicare (and Medicaid if applicable) patients on behalf of 100% owned subsidiary companies which may operate separate offices. The doctors work for the parent company, but the patients agree that they are being seen by the subsidiary company. A plaintiff lawyer may not know that the plaintiff can sue the parent company if it employees the physician who is alleged to commit malpractice.


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New CMS Pronouncement on Parent/Subsidiary Medical Practice and Business Entities

By Alan Gassman (CONTINUED)

3) Not So Safe(?) - Billing for Medicare and Medicaid services will be under the parent company, but the doctors are employed by subsidiaries. Questioned by the advisory opinion.

4) Now Safe(?) - A subsidiary, such as a diagnostic imaging center that uses independent contractor radiologists who are not owners or employees in the group practice bills under its own separate taxpayer identification number, if "the income and expenses of the subsidiary are considered to be the income and expenses of the parent company".

Under the advisory opinion, the physicians and clinical staff were part of the parent company. For example, an independent contractor radiologist would not be contracted under the subsidiary, but was contracted under the parent company.


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- **Question 1 for Lester Perling** –

  What if the parent company bills for Medicare and Medicaid services but the subsidiaries bill for all other services?


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- **Question 2 for Lester Perling** –

  What about work done for Medicare HMO's?

- **Question 3 for Lester Perling –**

  How will a plaintiff lawyer know that the income and expenses of the subsidiary are considered to be the income and expenses of the parent company?

COMPARISON CHART OF FLORIDA PATIENT SELF-REFERRAL ACT AND FEDERAL STARK LAW


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COMPARISON CHART OF FLORIDA PATIENT SELF-REFERRAL ACT AND FEDERAL STARK LAW

CATEGORY	FLORIDA PATIENT SELF-REFERRAL ACT	STARK LAW
Applicability	Applies to all referrals for health care items or services (including, but not limited to, Designated Health Services) regardless of payor.	Limited to referrals for Designated Health Services paid for or covered by Medicare or Medicaid (including HMOs).
Financial Interest	Limited to referrals to entities with which the physician is an investor or has an "investment interest."	Applies to referrals to entities with which the physician has a "financial relationship" through ownership or "investment interests" or through "compensation arrangements"
Designated Health Services	Designated Health Services include: 1) clinical laboratory services 2) physical therapy services 3) radiation therapy services 4) diagnostic imaging services (not x-rays) 5) occupational therapy services 6) outpatient speech-language pathology services NOTE: Items 7 - 12 to the right under the Stark Law column are not regulated by the Florida Patient Self-Referral Act except as to the general prohibition with respect to "health" care items.	Designated Health Services include: 1) clinical laboratory services 2) physical therapy services 3) radiation therapy services and supplies; radiology 4) other imaging services (includes x-rays) 5) occupational therapy services 6) outpatient speech-language pathology services Federal Designated Health Services also include: 7) durable medical equipment and supplies 8) parenteral and enteral nutrients, equipment, and supplies 9) prosthetics, orthotics, and supplies 10) home health services 11) outpatient prescription drugs 12) inpatient and outpatient hospital services However, these services would still fall under "Health Care Items or Services" in Florida Statutes Section 456.053(5)(b).


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COMPARISON CHART OF FLORIDA PATIENT SELF-REFERRAL ACT AND FEDERAL STARK LAW (Continued)

CATEGORY	FLORIDA PATIENT SELF-REFERRAL ACT	STARK LAW
Group Practice Direct Supervision Requirements	Designated Health Services must be performed under the direct supervision of the referring physician or group practice, meaning that one of the following individuals must be present in the office suite when the service is performed: 1) the referring physician; or 2) a physician who is the same group practice as the referring physician.	Designated Health Services must be performed by one of the following: 1) the referring physician; 2) a physician who is the same group practice as the referring physician; 3) an individual who is supervised by the referring physician; or 4) an individual who is supervised by another physician in the same group.
Group Practice Location Requirements	Does not impose specific location requirements.	To use the in office ancillary services exception, Designated Health Services must be performed either: 1) in a "centralized building" used exclusively by the group practice; or 2) in the "same building" where physicians in the group provide the full range of services.


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COMPARISON CHART OF FLORIDA PATIENT SELF-REFERRAL ACT AND FEDERAL STARK LAW (Continued)

CATEGORY	FLORIDA PATIENT SELF-REFERRAL ACT	STARK LAW
Group Practice Compensation	Physicians in a group practice may not receive compensation directly or indirectly based on the volume or value of referrals of the physician. Note: The Stark Law guidance regarding group practice compensation using overall profit sharing methods and productivity bonuses should apply in Florida, but no specific guidance is provided in the Florida law.	Physicians in a group practice may not receive compensation directly or indirectly based on the volume or value of referrals of the physician. Note: Non-Medicare/Medicaid sharing of income from Designated Health Services is not regulated by the Stark Law. Stark provides specific provisions allowing group practices to pay physicians using certain overall profit sharing methods and productivity bonuses. Allows profits from designated health services to be divided into "cost centers" consisting of at least 5 physicians. Each "cost center" can implement its own compensation methods, consistent with the Stark Law.
Prohibition against Acceptance of Outside Referrals for Diagnostic Imaging Services	Prohibits acceptance of outside referrals for diagnostic imaging services. Allows group practice to accept outside referrals for diagnostic imaging services, so long as no more than 15% of the group's patients are obtained through such outside referrals and several strict requirements are met.	Does not specifically prohibit outside referrals.


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COMPARISON CHART OF FLORIDA PATIENT SELF-REFERRAL ACT AND FEDERAL STARK LAW (Continued)

CATEGORY	FLORIDA PATIENT SELF-REFERRAL ACT	STARK LAW
Prohibitions Relating to Health Care Services **OTHER THAN** Designated Health Services	Prohibits referrals for the provision of **any other health care item or service** in which the physician is an investor. This broad provision sweeps nearly every item or service provided by a physician under the prohibitions of this Act, and could include vitamins, food supplements, and other non-regulated items. See Florida Statute Section 456.053(5)(b).	Only applies to referrals for Designated Health Services (as described above) paid for covered by Medicare and Medicaid.
Notable Exceptions for Arrangements that **Do Not Involve** Designated Health Services	1) Publicly Traded Entity Exception; and 2) Exception for physicians who own less than 50% of an investment interest in the entity where the physician's term of investment are the same as terms offered to non-referring investors, and Designated Health Services are not furnished by the entity.	Not applicable to Stark Law.
Penalties	Civil monetary penalties, Denial of payment, Required refunds, and Licensure discipline.	Civil monetary penalties, Denial of payment, Required refunds, possible False Claims Act Liability, and exclusion from federal health care programs.


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KEY STARK LAW PROVISIONS, FROM 42 U.S.C. Section 1395nn

LIMITATION ON CERTAIN PHYSICIAN REFERRALS
Sec. 1877 [42 U.S.C. 1395nn]
(a) Prohibition of certain referrals.
(1) In general. Except as provided in subsection (b), if a physician (or an immediate family member of such physician) has a financial relationship with an entity specified in paragraph (2), then-
(A) the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made under this title, and (B) the entity may not present or cause to be presented a claim under this title or bill to any individual, third party payor, or other entity for designated health services furnished pursuant to a referral prohibited under subparagraph (A).
(2) Financial relationship specified. For purposes of this section, a financial relationship of a physician (or an immediate family member of such physician) with an entity…specified in this paragraph is—
(b) General exceptions to both ownership and compensation arrangement prohibitions.
Subsection (a)(1) shall not apply in the following cases:
(1) Physicians' services. In the case of physicians' services (as defined in section 1861(q)) provided personally by (or under the personal supervision of) another physician in the same group practice (as defined in subsection (h)(4)) as the referring physician.
(2) In-office ancillary services. In the case of services (other than durable medical equipment (excluding infusion pumps) and parenteral and enteral nutrients, equipment, and supplies)-
(A) that are furnished-
(i) personally by the referring physician, personally by a physician who is a member of the same group practice as the referring physician, or personally by individuals who are directly supervised by the physician or by another physician in the group practice, and
(ii) (I) in a building in which the referring physician (or another physician who is a member of the same group practice) furnishes physicians' services unrelated to the furnishing of designated health services, or
(II) in the case of a referring physician who is a member of a group practice, in another building which is used by the group practice--
(aa) for the provision of some or all of the group's clinical laboratory services, or
(bb) for the centralized provision of the group's designated health services (other than clinical laboratory services), unless the Secretary determines other terms and conditions under which the provision of such services does not present a risk of program or patient abuse, and
(B) that are billed by the physician performing or supervising the services, by a group practice of which such physician is a member under a billing number assigned to the group practice, or by an entity that is wholly owned by such physician or such group practice, if the ownership or investment interest in such services meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

KEY STARK LAW PROVISIONS, FROM 42 U.S.C. Section 1395nn

(4) Other permissible exceptions. In the case of any other financial relationship which the Secretary determines, and specifies in regulations, does not pose a risk of program or patient abuse.

(c) General exception related only to ownership or investment prohibition for ownership in publicly traded securities and mutual funds.

(e) Exceptions relating to other compensation arrangements. The following shall not be considered to be a compensation arrangement described in subsection (a)(2)(B):

(1) Rental of office space; rental of equipment.

(A) Office space. Payments made by a lessee to a lessor for the use of premises if--

(i) the lease is set out in writing, signed by the parties, and specifies the premises covered by the lease,

(ii) the space rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee, except that the lessee may make payments for the use of space consisting of common areas if such payments do not exceed the lessee's pro rata share of expenses for such space based upon the ratio of the space used exclusively by the lessee to the total amount of space (other than common areas) occupied by all persons using such common areas,

(iii) the lease provides for a term of rental or lease for at least 1 year,

(iv) the rental charges over the term of the lease are set in advance, are consistent with fair market value, and are not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,

(v) the lease would be commercially reasonable even if no referrals were made between the parties, and

(vi) the lease meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.

(B) Equipment. Payments made by a lessee of equipment to the lessor of the equipment for the use of the equipment if--

(i) the lease is set out in writing, signed by the parties, and specifies the equipment covered by the lease,

(ii) the equipment rented or leased does not exceed that which is reasonable and necessary for the legitimate business purposes of the lease or rental and is used exclusively by the lessee when being used by the lessee,

KEY STARK LAW PROVISIONS, FROM 42 U.S.C. Section 1395nn

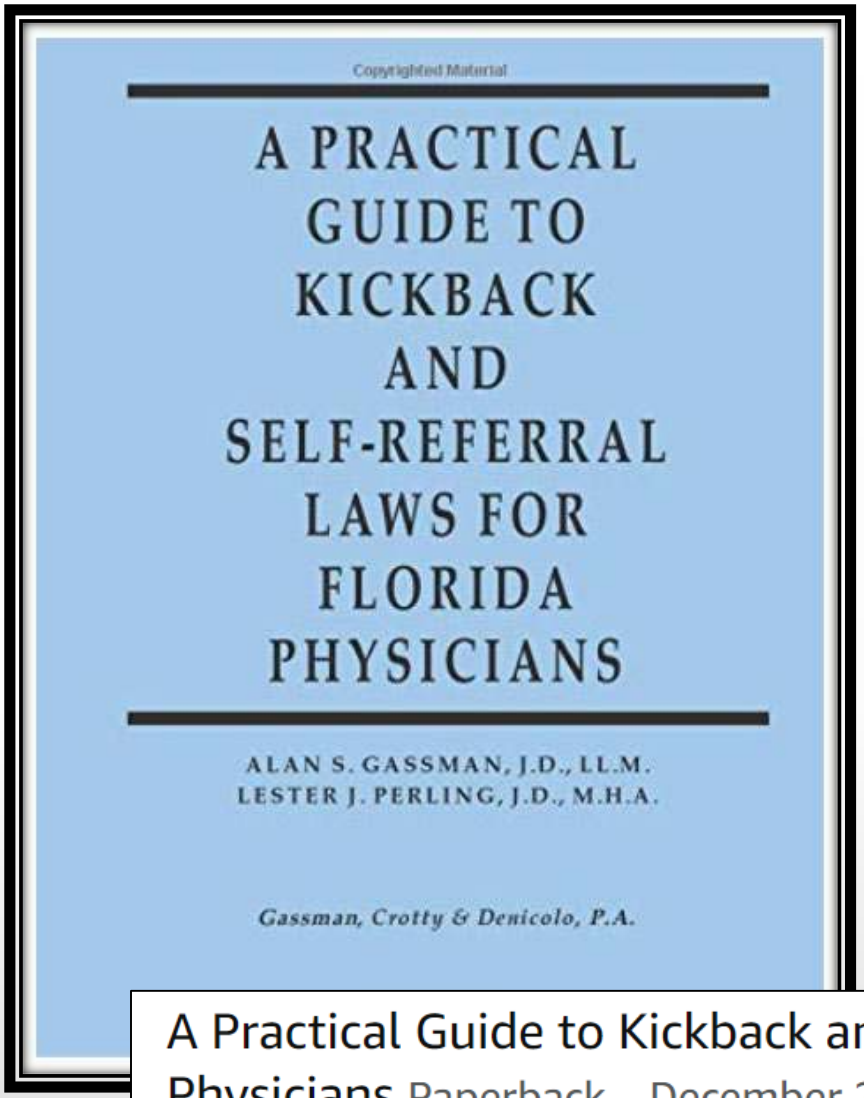
(2) Bona fide employment relationships. Any amount paid by an employer to a physician (or an immediate family member of such physician) who has a bona fide employment relationship with the employer for the provision of services if—
(A) the employment is for identifiable services,
(B) the amount of the remuneration under the employment—
(i)is consistent with the fair market value of the services, and
(ii) is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician,
(C) the remuneration is provided pursuant to an agreement which would be commercially reasonable even if no referrals were made to the employer, and
(D) the employment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.
Subparagraph (B)(ii) shall not prohibit the payment of remuneration in the form of a productivity bonus based on services performed personally by the physician (or an immediate family member of such physician).
(3) Personal service arrangements.
(A) In general. Remuneration from an entity under an arrangement (including remuneration for specific physicians' services furnished to a nonprofit blood center) if (i) the arrangement is set out in writing, signed by the parties, and specifies the services covered by the arrangement,
(ii) the arrangement covers all of the services to be provided by the physician (or an immediate family member of such physician) to the entity,
(iii) the aggregate services contracted for do not exceed those that are reasonable and necessary for the legitimate business purposes of the arrangement,
(iv) the term of the arrangement is for at least 1 year,
(v) the compensation to be paid over the term of the arrangement is set in advance, does not exceed fair market value, and except in the case of a physician incentive plan described in subparagraph (B), is not determined in a manner that takes into account the volume or value of any referrals or other business generated between the parties,
(vi) the services to be performed under the arrangement do not involve the counseling or promotion or a business arrangement or other activity that violates any State or Fed. law
(vii) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.
(5) Physician recruitment. In the case of remuneration which is provided by a hospital to a physician to induce the physician to relocate to the geographic area served by the hospital in order to be a member of the medical staff of the hospital, if—
(A) the physician is not required to refer patients to the hospital,
(B) the amount of the remuneration under the arrangement is not determined in a manner that takes into account (directly or indirectly) the volume or value of any referrals by the referring physician, and
(C) the arrangement meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.
(6) Isolated transactions. In the case of an isolated financial transaction, such as a onetime sale of property or practice, if--
(A) the requirements described in subparagraphs (B) and (C) of paragraph (2) are met with respect to the entity in the same manner as they apply to an employer, and (B) the transaction meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.
(8) Payments by a physician for items and services. Payments made by a physician--
(A) to a laboratory in exchange for the provision of clinical laboratory services, or
(B) to an entity as compensation for other items or services if the items or services are furnished at a price that is consistent with fair market value.

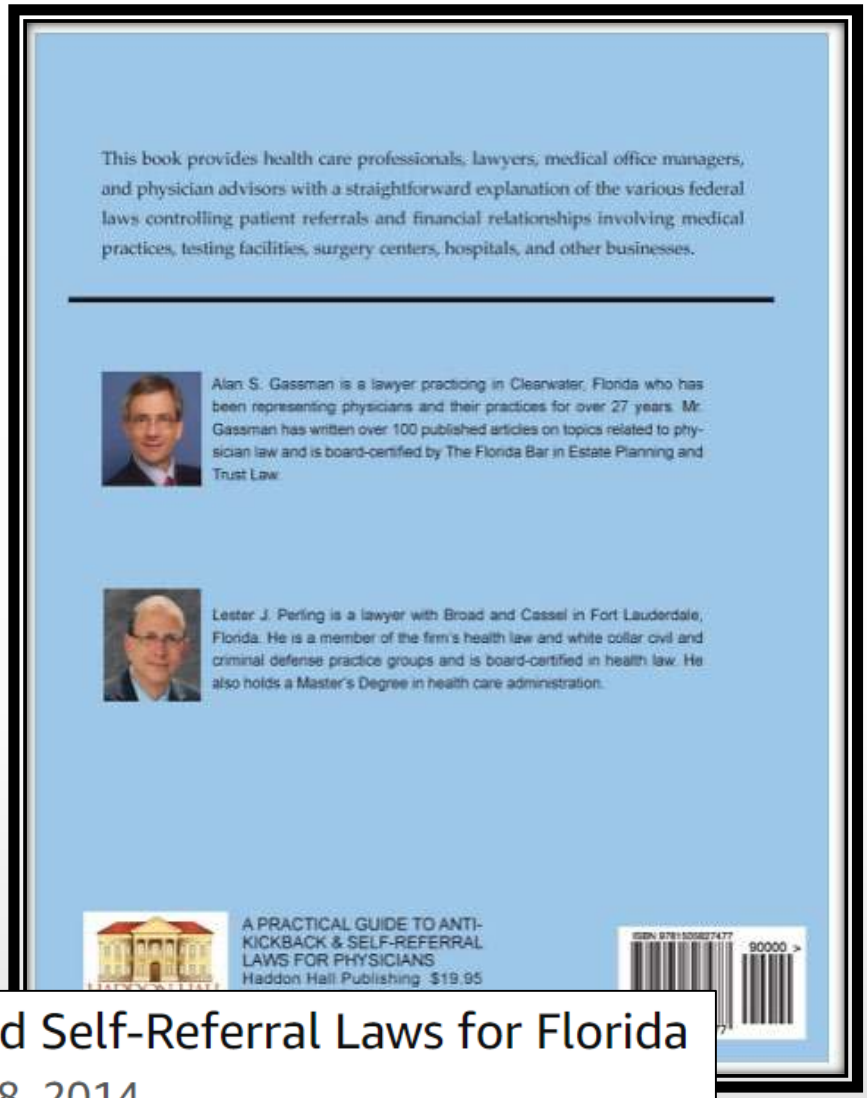
KEY STARK LAW PROVISIONS, FROM 42 U.S.C. Section 1395nn

(f) Reporting requirements. Each entity providing covered items or services for which payment may be made under this title shall provide the Secretary with the information concerning the entity's ownership, investment, and compensation arrangements, including--
(1) the covered items and services provided by the entity, and
(2) the names and unique physician identification numbers of all physicians with an ownership or investment interest (as described in subsection (a)(2)(A)), or with a compensation arrangement (as described in subsection (a)(2)(B)), in the entity, or whose immediate relatives have such an ownership or investment interest or who have such a compensation relationship with the entity.
Such information shall be provided in such form, manner, and at such times as the Secretary shall specify. The requirement of this subsection shall not apply to designated health services provided outside the United States or to entities which the Secretary determines provides [provide] services for which payment may be made under this title very infrequently.
(g) Sanctions.
(1) Denial of payment. No payment may be made under this title for a designated health service which is provided in violation of subsection (a)(1).
(2) Requiring refunds for certain claims. If a person collects any amounts that were billed in violation of subsection (a)(1), the person shall be liable to the individual for, and shall refund on a timely basis to the individual, any amounts so collected.
(3) Civil money penalty and exclusion for improper claims. Any person that presents or causes to be presented a bill or a claim for a service that such person knows or should know is for a service for which payment may not be made under paragraph (1) or for which a refund has not been made under paragraph (2) shall be subject to a civil money penalty of not more than $ 15,000 for each such service.
(5) Failure to report information. Any person who is required, but fails, to meet a reporting requirement of subsection (f) is subject to a civil money penalty of not more than $ 10,000 for each day for which reporting is required to have been made. The provisions of section 1128A (other than the first sentence of subsection (a) and other than subsection (b)) shall apply to a civil money penalty under the previous sentence in the same manner as such provisions apply to a penalty or proceeding under section 1128A(a).
(h) Definitions and special rules. For purposes of this section:
(1) Compensation arrangement; remuneration.
(A) The term "compensation arrangement" means any arrangement involving any remuneration between a physician (or an immediate family member of such physician) and an entity other than an arrangement involving only remuneration described in subparagraph (C).
(B) The term "remuneration" includes any remuneration, directly or indirectly, overtly or covertly, in cash or in kind.
(C) Remuneration described in this subparagraph is any remuneration consisting of any of the following:
(i) The forgiveness of amounts owed for inaccurate tests or procedures, mistakenly performed tests or procedures, or the correction of minor billing errors.
(ii) The provision of items, devices, or supplies that are used solely to--
(I) collect, transport, process, or store specimens for the entity providing the item,
device, or supply, or
(II) order or communicate the results of tests or procedures for such entity.
(iii) A payment made by an insurer or a self-insured plan to a physician to satisfy a claim, submitted on a fee for service basis, for the furnishing of health services by that physician to an individual who is covered by a policy with the insurer or by the selfinsured plan, if—
(I) the health services are not furnished, and the payment is not made, pursuant to a contract or other arrangement between the insurer or the plan and the physician, (II) the payment is made to the physician on behalf of the covered individual and would otherwise be made directly to such individual,
(III) the amount of the payment is set in advance, does not exceed fair market value, and is not determined in a manner that takes into account directly or indirectly the volume or value of any referrals, and
(IV) the payment meets such other requirements as the Secretary may impose by regulation as needed to protect against program or patient abuse.
(2) Employee. An individual is considered to be "employed by" or an "employee" of an entity if the individual would be considered to be an employee of the entity under the usual common law rules applicable in determining the employer-employee relationship (as applied for purposes of section 3121(d)(2) of the Internal Revenue of 1986.

KEY STARK LAW PROVISIONS, FROM 42 U.S.C. Section 1395nn

(4) Group practice.
(A) Definition of group practice. The term "group practice" means a group of 2 or more physicians legally organized as a partnership, professional corporation, foundation, not-for-profit corporation, faculty practice plan, or similar association-
(i) in which each physician who is a member of the group provides substantially the full range of services which the physician routinely provides, including medical care, consultation, diagnosis, or treatment, through the joint use of shared office space, facilities, equipment and personnel,
(ii) for which substantially all of the services of the physicians who are members of the group are provided through the group and are billed under a billing number assigned to the group and amounts so received are treated as receipts of the group,
(iii) in which the overhead expenses of and the income from the practice are distributed in accordance with methods previously determined,
(iv) except as provided in subparagraph (B)(i), in which no physician who is a member of the group directly or indirectly receives compensation based on the volume or value of referrals by the physician,
(v) in which members of the group personally conduct no less than 75 percent of the physician-patient encounters of the group practice, and
(vi) which meets such other standards as the Secretary may impose by regulation.
(B) Special rules.
(i) Profits and productivity bonuses. A physician in a group practice may be paid a share of overall profits of the group, or a productivity bonus based on services personally performed or services incident to such personally performed services, so long as the share or bonus is not determined in any manner which is directly related to the volume or value of referrals by such physician.
(5) Referral; referring physician.
(A) Physicians' services. Except as provided in subparagraph (C), in the case of an item or service for which payment may be made under part B, the request by a physician for the item or service, including the request by a physician for a consultation with another physician (and any test or procedure ordered by, or to be performed by (or under the supervision of) that other physician), constitutes a "referral" by a "referring physician".
(B) Other items. Except as provided in subparagraph (C), the request or establishment of a plan of care by a physician which includes the provision of the designated health service constitutes a "referral" by a "referring physician".
(C) Clarification respecting certain services integral to a consultation by certain specialists. A request by a pathologist for clinical diagnostic laboratory tests and pathological examination services, a request by a radiologist for diagnostic radiology services, and a request by a radiation oncologist for radiation therapy, if such services are furnished by (or under the supervision of) such pathologist, radiologist, or radiation oncologist pursuant to a consultation requested by another physician does not constitute a
"referral" by a "referring physician".
(6) Designated health services. The term "designated health services" means any of the
following items or services:
(A) Clinical laboratory services.
(B) Physical therapy services.
(C) Occupational therapy services.
(D) Radiology services, including magnetic resonance imaging, computerized axial tomography scans, and ultrasound services.
(E) Radiation therapy services and supplies.
(F) Durable medical equipment and supplies.
(G) Parenteral and enteral nutrients, equipment, and supplies.
(H) Prosthetics, orthotics, and prosthetic devices and supplies.
(I) Home health services.
(J) Outpatient prescription drugs.
(K) Inpatient and outpatient hospital services.





A Practical Guide to Kickback and Self-Referral Laws for Florida Physicians Paperback – December 28, 2014

by Alan S Gassman (Author), Lester J Perling (Author)

★★★★★ 3 ratings

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Friday August 27
1:00PM ET - 2:30PM ET

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PPP and Employee Retention Credit (ERC) Update - What the Sophisticated Advisors Needs To Know about the SBA and IRS's Recently Issued Guidance - A Special Re-Broadcast

Wednesday August 18
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GOING TO BAT WITH YOUR SLAT: SLATS, INSTALLMENT SALES, ADJUSTMENT CLAUSES, AND OTHER ESSENTIALS WITH FORM LANGUAGE, CLIENT FRIENDLY EXPLANATION LETTERS AND MORE - A Special Re-Broadcast

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ALAN GASSMAN'S FREE SATURDAY MORNING WEBINAR SERIES

Saturday, June 26th	**Free webinar from our firm**	**Asset Protection Meets Estate Tax Planning 11:00 AM EDT**	**Play Recording**
Saturday, July 3rd	**Free webinar from our firm**	**Special Update on Recent Developments and Hot Topics 11:00 AM EDT**	**Play Recording**
Saturday, July 10th	**Free webinar from our firm**	**More Mathematics Of Estate Tax Planning 11:00 AM EDT**	**Play Recording**
Saturday, July 17th	**Free webinar from our firm**	**Hard Questions and Interesting Answers for Estate Planners 11:00 AM EDT**	**Play Recording**
Saturday, July 24th	**Free webinar from our firm**	**Estate Planning for Business Owners 11:00 AM EDT**	**Play Recording**
Saturday, August 7th	**Free webinar from our firm**	**The SCGRAT, the JEST, and the E Street Shuffle 11:00 AM EDT**	**Play Recording**
Saturday, August 14th	**Free webinar from our firm**	**Greatest Hits - Also Known As More Of The Same 11:00 AM EDT**	**Play Recording**
Saturday, August 21st	**Free webinar from our firm**	**Spousal Limited Access Trusts From A to Z 11:00 AM EDT**	**The recording is on Alan Gassman's YouTube**
Saturday, August 28th	**Free webinar from our firm**	**Family Installment Sale Planning From A to Z 11:00 AM EDT**	**Register Here**
Saturday, September 4th	**Free webinar from our firm**	**Estate Tax Planning, Community Property Trusts, And Other Topics 11:00 PM**	**Register Here**
Saturday, September 11th	**Free webinar from our firm**	**Greatest Hits – A Review (Part 2) 11:00 AM EDT**	**Register Here**

Did you Miss a Webinar?
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AVE MARIA SCHOOL OF LAW

In-Person Seminar: Friday, October, 8th, 2021
12:00 PM to 5:00 PM EDT in Naples, FL
CLICK HERE FOR MORE INFORMATION.

FIDES ET RATIO
AVE MARIA SCHOOL of LAW

REACH YOUR PERSONAL GOALS, INCREASE PRODUCTIVITY AND ACCELERATE YOUR CAREER!

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Alan S. Gassman, J.D., LLM.'s

Professional Acceleration Workshop

Alan Gassman's Professional Acceleration Workshop was a fast-paced, information-packed, and highly instructional event. Through interactive discussions of time-tested professional and personal growth strategies ranging from goal setting and problem solving to office efficiency and effective team building, Alan provides a thoughtful and measured approach to becoming a highly effective professional. I left the workshop feeling invigorated and excited to implement the insights into my practice management and continued self-study. The course materials and Alan's compilation of trusted additional resources will be an invaluable resource for years to come. Thank you for the opportunity to participate. — **Christina Rankin, J.D., LL.M. (Taxation), Trust and Estates Lawyer with Over 10 Years of Experience Law Offices of Richard D. Green, J.D., LL.M.**

AVE MARIA SCHOOL OF LAW

12:00 P.M. to 5:00 P.M.

AVE MARIA SCHOOL OF LAW

Please join us for this CLE approved interactive workshop that will completely engage you in personal goal setting, how to handle practical challenges and obstacles, strategies for business and personal relationships, and client interaction techniques commonly used by the most successful professionals.

This workshop will include the following sessions:

Session 1: Goals and How to Reach Them
Session 2: Eliminating Frustrations and Obstacles
Session 3: Solving Problems & Developing Strategies
Session 4: How to Effectively Attract, Serve, and Retain Clients
Session 5: How to Develop a Great Team
Session 6: Putting it All Together!
***Optional* Session 7:** Special hour for estate planners

Alan S. Gassman is a practicing lawyer and author based in Clearwater, Florida. Mr. Gassman is the founder of the firm Gassman Law Associates, P.A., which focuses on the representation of physicians, high net worth individuals, and business owners in estate planning, taxation, and business and personal asset structuring.

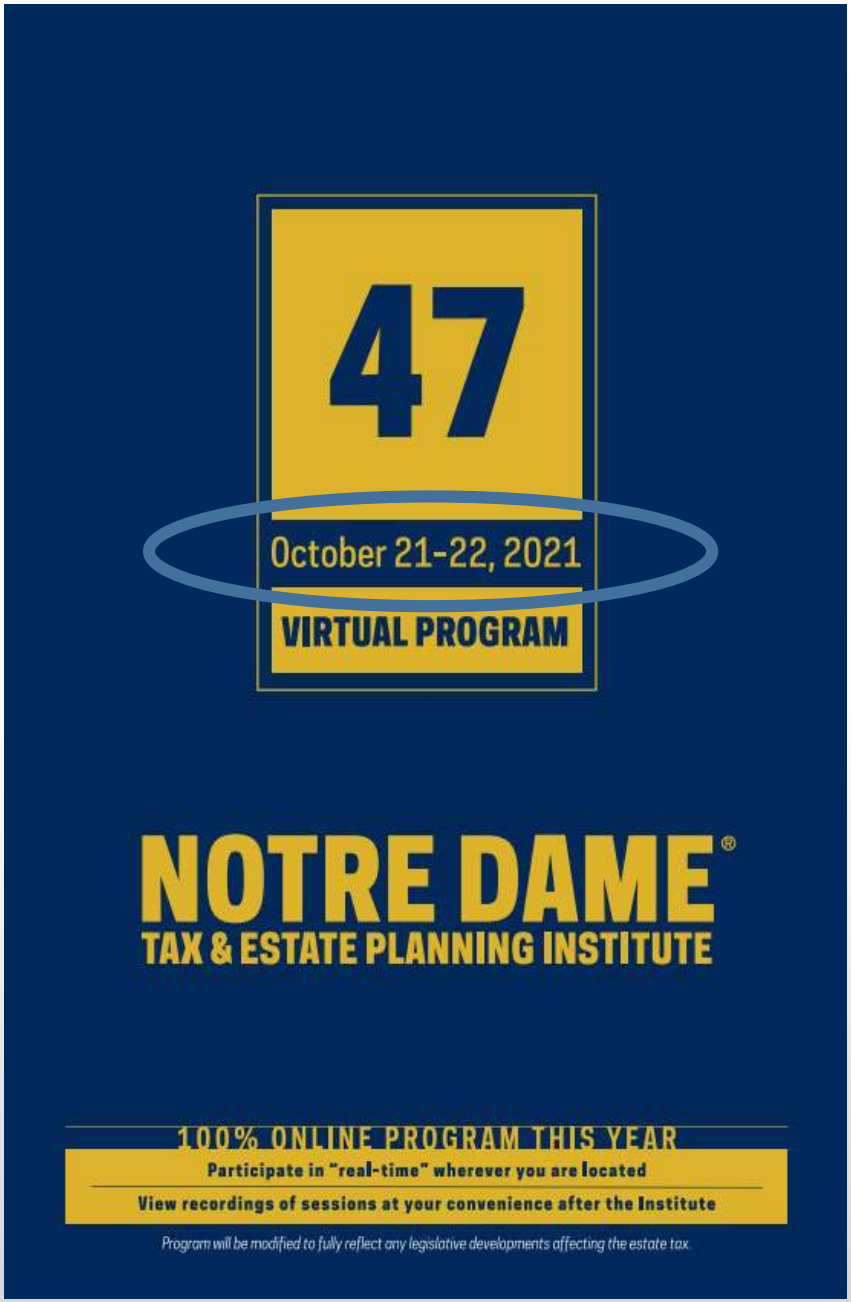
In-Person Seminar

Friday, October, 8th, 2021

12:00 PM to 5:00 PM EDT

Naples, FL

CLICK HERE FOR MORE INFORMATION.

PROGRAM INFORMATION

The Institute will be held October 21 and 22, 2021. Due to the Covid-19 situation, this year's program will be presented exclusively online via Zoom classrooms. This program will use Eastern Time (same as New York City).

REGISTER ONLINE AT:

http://law.nd.edu/estateplanning

Continuing Education Certification
For those attendees desiring certification of attendance at the program, the Institute will issue certificates of attendance with respect to the sessions viewed in real-time via Zoom. Attendees may be required to confirm their real-time participation in these sessions by responding to prompts integrated into the online delivery system or otherwise. Due to practical limitations, the Institute will seek pre-approval, and report attendance, only with respect to those accrediting agencies for which there are a significant number of attendees seeking credit. The program will afford up to 16 actual hours of continuing education in this manner, including up to 2 hours of ethics. Each continuing education accrediting agency determines the number of continuing education hours (including ethics) it will accept for accreditation. While the Institute intends to make recordings of all sessions available to attendees after the Institute (enabling, for example, an attendee to later watch a session that conflicted with the "real time" session the attendee participated in), the Institute is unable to track or confirm post-Institute self-viewing of these recordings. Attendees are advised to contact their accrediting agency to determine how much, if any, continuing education credit is available for this post-Institute self-viewing.

Registration and Availability of Materials
All registration is done online at http://law.nd.edu/estateplanning, and should be done by September 4 to assure your place. The fee for the Institute is $795, which includes real-time participation via Zoom in one session per time period of the Institute, as well as access after the Institute to online video recordings of all sessions (access to these post-Institute recordings may be available for a limited time, and may be subject to technological limitations). In addition, your registration fee includes online access to electronic versions of the extensive course outlines, made available for download in advance of the Institute. Physical copies of these materials are available for an additional fee, which includes the delivery cost ($70 for a set of printed books, and $20 for a flash drive). In order to enable delivery of these optional physical materials to you prior to the Institute, you must register by September 4, 2021 (registrations after that date will still be accepted but will have access to the optional physical materials only while limited supplies last). Registrations are cancellable and refundable (less a $35 processing fee) until September 4, 2021.

Confirmations
Confirmations will be emailed.

System Requirements:
- Must have internet connection
- Must be logged into a valid Zoom account, which shares the same email address used during registration
- Must be using the latest version of Zoom's App
- Due to certification concerns, connecting to the Institue via telephone will not be an available option

Technical Support:
Technical support to assist with connecting to Zoom meeting sessions will be available on the day of the program. One week prior to the program an informational packet will be emailed containing basic logistic and technical information. Included will be a basic troubleshooting guide as well as direct contact information to gain assistance if required on the day of the program.

UNIVERSITY of NOTRE DAME

THE LAW SCHOOL

SLATs: How to Keep your SLATs from going Kersplat!

WEDNESDAY, OCTOBER 20, 2021

FROM 3:00 TO 5:00 PM EDT (60 MINUTES)

PRESENTED BY:

CHRISTOPHER DENICOLO AND BRANDON KETRON

CLICK HERE FOR MORE INFORMATION.

WEDNESDAY

OCTOBER 20, 2021 — **2 credit hours**

3:00 - 5:00 pm (120 mins): SLATs: How to Keep Your SLATs from going Kersplat!
~ *Brandon Ketron & Chris Denicolo*

THURSDAY

OCTOBER 21, 2021 — **7 credit hours - 1 hour ethics**

8:00 - 8:10 am:
Welcoming Ceremonies
~ *Jerome M. Hesch*

8:10-10:10 am | Session 1 (120 mins):
Current Developments of Importance to Estate Planners
~ *Turney Berry, Stephanie Loomis-Price & Charles Redd*

A — choose from the following sessions which are scheduled to run concurrently — **B**

A	B
10:20 - 11:20 am | Session 2A (60 mins): Structuring and Planning with Non-Grantor Trusts While an Individual is Living: It's Harder Than You Think ~ *David Handler & Christiana Laza*	**10:20 - 11:20 am | Session 2B** (60 mins): GST Planning Flexibility and Common Mistakes ~ *Raj Malviya & Nathan Brown*
11:30 am - 12:30 pm | Session 3A* (60 mins): Why Fiduciary Accounting May Be More Important Than You Think ~ *Daniel Ebner & Ray Prather*	**11:30 am - 12:30 pm | Session 3B*** (60 mins): When Tax, Estate and Business Planning Collides with the interests of family members: Ethics traps and tips ~ *Robert Barton & Golnaz Yazdchi*
1:30 - 2:30 pm | Session 4A (60 mins): Trust Income Tax Issues That Are Confusing ~ *Greg Godorian*	**1:30 - 2:30 pm | Session 4B** (60 mins): Impact of Mortality Tables and §7520 Rates on Charitable Split Interest Trusts ~ *Jason Havens*
2:40 - 3:40 pm | Session 5A (60 mins): More than creditor protection: Practical uses of a domestic asset protection trust for estate planning ~ *George Karibjanian*	**2:40 - 3:40 pm | Session 5B** (60 mins): Freeze Planning for non-GST exempt trusts and QTIP trusts exposed to §§2044 and 2519 ~ *Edward Morrow*
3:50 - 5:00 pm | Session 6A (70 mins): Diversity, Equity, and Inclusion Concerns For Your Practice ~ *Susan Lipp (Moderator), Martin Shenkman, Kim Kamin, Yaser Ali & Melisa Seyuhn*	**3:50 - 5:00 pm | Session 6B** (70 mins): Evaluating Life Insurance Products ~ *Rebecca Rosofsky & Lawrence Herman*

***ethics credits**

Does more than one session during a concurrent time period look interesting? No problem! All sessions will be recorded and we plan to make them available at no additional charge for online viewing by attendees after the Institute.

UNIVERSITY of NOTRE DAME

THE LAW SCHOOL

Tools and Strategies to Avoid Ethical Issues in Estate Planning

FRIDAY, OCTOBER 22, 2021

FROM 1:30 TO 2:30 PM EDT (60 MINUTES)

PRESENTED BY:

ALAN GASSMAN AND JONATHAN BLATTMACHR

CLICK HERE FOR MORE INFORMATION.

FRIDAY

OCTOBER 22, 2021 — **7 credit hours - 1 hour ethics**

A choose from the following sessions which are scheduled to run concurrently **B**

A	B
8:00 - 9:00 am | Session 7A (60 mins): Creative Planning Considering the Changing Political Landscape and Possible Tax Consequences – *Johnathan Blattmachr, Martin Shenkman & Sandra Glazier*	**8:00 - 9:00 am | Session 7B** (60 mins): Insecure about the Secure Act? How to draft retirement plans, beneficiary designations and estate planning documents – *Robert Kirkland*
9:10 - 10:10 am | Session 8A (60 mins): Existing planning techniques that will still work even if proposals are enacted – *Austin Bramwell & Jessica Soojian*	**9:10 - 10:10 am | Session 8B** (60 mins): Disposing of Qualified Deferred Compensation to Charity – *Christopher Hoyt*
10:20 - 11:20 am | Session 9A (60 mins): Preferred partnership freezes – *Steve Breitstone, Todd Angkatavanich & Joseph Medina*	**10:20 - 11:20 am | Session 9B** (60 mins): When Worlds Collide: Beneficial Interests in Trusts and Dissolution of Marriage – *Sharon Klein & Sandra Glazier*
11:30 am - 12:30 pm | Session 10A (60 mins): Partnership income tax traps – *Todd Steinberg*	**11:30 am - 12:30 pm | Session 10B** (60 mins): Cross-border families: Planning Tips – *John M. Fusco*
1:30 - 2:30 pm | Session 11A* (60 mins): Tools and Strategies to Avoid Ethical Issues in Estate Planning – *Alan Gassman & Jonathan Blattmachr*	**1:30 - 2:30 pm | Session 11B*** (60 mins): The Ethics of Multijurisdictional Practice When Crossing State Lines – *Roberta Mann*
2:40 - 3:40 pm | Session 12A (60 mins): Community Property Tips and Traps for Lawyers in Common Law states: Strategies for Migrating Clients – *Gerry Beyer*	**2:40 - 3:40 pm | Session 12B** (60 mins): The Uniform Basis Rules and Terminating Interests in Trusts Early – *F. Ladson Boyle*

3:50 - 4:50 pm \| Session 13 (60 mins): Tying it all together wrap-up – *Charles "Clary" Redd, Turney Berry & Stephanie Loomis-Price*

***ethics credits**

Program is subject to change and will be modified to reflect any legislative developments affecting estate tax.

FREE WEBINAR!

Estate and Related Planning Today:

A Tasting Menu of the Upcoming 46th Annual Notre Dame Tax & Estate Planning Institute

Date and Time: August 31, 2021, 4 pm – 5 pm EST.

Course Description: This will be a fast-paced review of a wide range of practical planning ideas including Freeze planning for GST exposed trust and QTIP trusts; Installment sales to non-grantor trusts; Mathematics of charitable planning; Creative planning considering the changing political landscape; Beneficial interests in trusts and dissolution of marriage; Strategies to avoid ethical issues in estate planning; Diversity equity, and inclusion- practical tips; SLAT tips; ERC and PPP; Agreements that protect clients and advisors: inheritance agreements, siblings agreements, and agreements with caretakers; and more!! The Notre Dame Tax & Estate Planning Institute will be broadcast virtually in October. This webinar will give practitioners a preview of some of the many topics to be addressed at this year's Institute.

Now in its 47th year, the Notre Dame Tax & Estate Planning Institute virtually brings together 38 speakers from around the US to present on cutting-edge income and transfer tax issues, fiduciary accounting, diversity and inclusion, family law, and more. The Institute's blend of sophisticated income tax planning with estate planning concepts and techniques will add value to your practice.

Speakers: Jerome Hesch, Esq, Jonathan Blattmachr, Esq. Alan Gassman, Esq., Sandra Glazier, Esq., Christopher Denicolo, Esq., Todd Angkatavanich, Esq., Martin Shenkman, Esq. and perhaps others.

Sponsor: Interactive Legal

There are no professional advancement credits (CPE, CLE, etc.) offered for viewing this webinar (but there are for attending the Institute).

*This may constitute attorney advertising.

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Certificates and Follow Up Emails to Absentees
A recording and all materials will be posted to www.shenkmanlaw.com/webinars. There is a growing library of 100+ webinars you can access at any time. Also, see www.laweasy.com for a library of 150+ 10 minute planning videos.

The Follow-Up email will include a link to the digital certificate. You can simply click the My Certificate URL to have the certificate open in a new browser window. Note that first and last names with over 50 characters each will be cropped. We cannot reprint or modify certificates.

The handout will be available during the webinar on the webinar side panel. Just download it!
If you would like to download the materials in advance go to www.shenkmanlaw.com blog post on the home page.

A recording of the webinar will be posted with materials to www.shenkmanlaw.com/webinars within a week following the program.

ESTATE PLANNING COUNCIL OF BIRMINGHAM, INC.

HOT TOPICS IN ESTATE TAX AND CREDITOR PROTECTION

Thursday, November 4, 2021

from 8:00 AM to 10:00 AM CT

Presented by:

Alan Gassman

agassman@gassmanpa.com

GASSMAN CROTTY DENICOLO P.A.
ATTORNEYS AT LAW
1245 Court Street, Clearwater, FL 33756

CLICK HERE FOR MORE INFORMATION.


The 23rd Annual
Estate, Tax, Legal & Financial Planning Seminar

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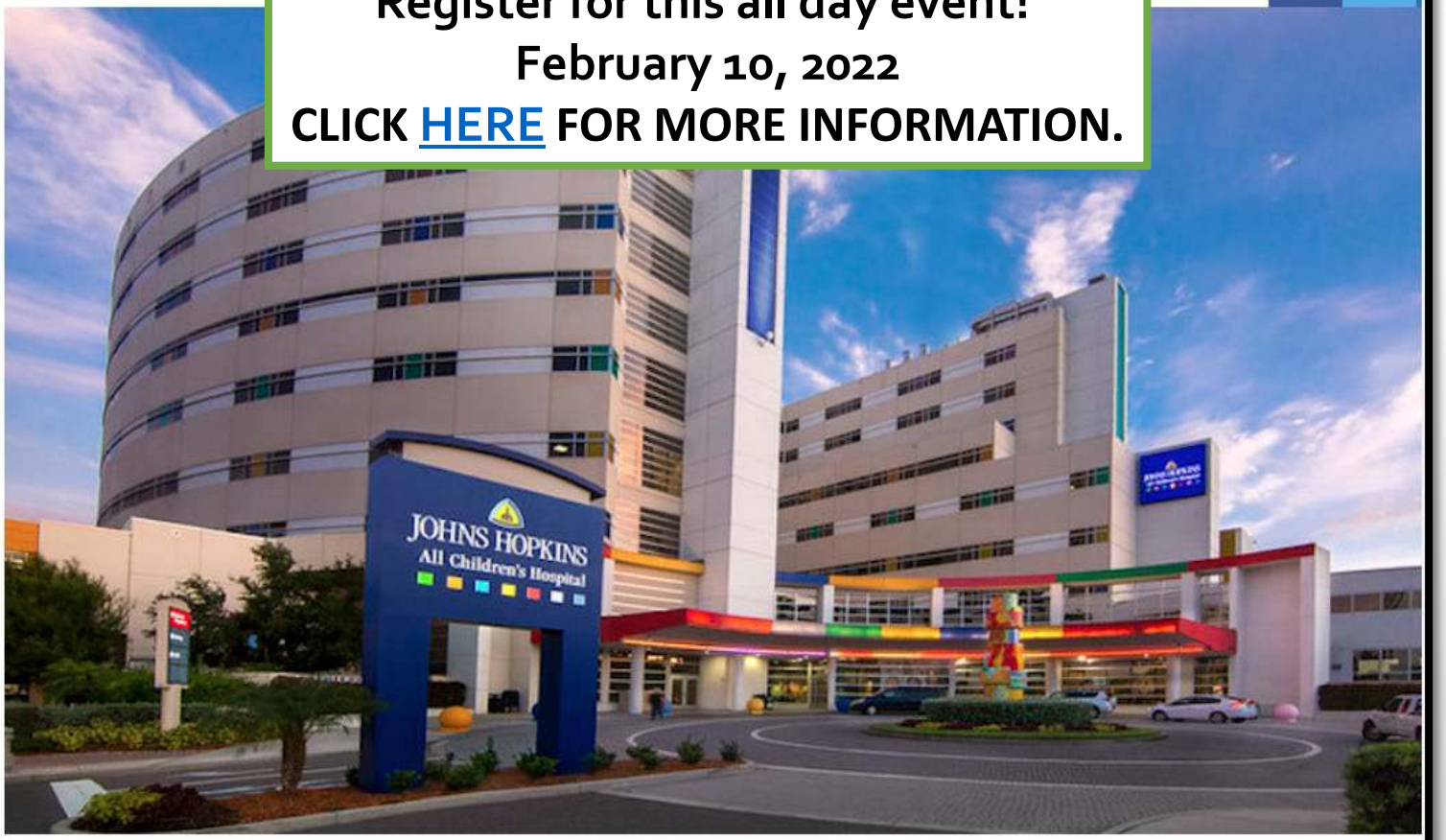


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Lester.Perling@nelsonmullins.com

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Please Note:

1. **This presentation does not qualify for Continuing Education Credit**

2. **After this event concludes, all registrants will receive an email with the Recording and Power Point slides**


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Lester.Perling@nelsonmullins.com

GASSMAN CROTTY & DENICOLO, P.A.
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Structuring Medical Practices Under Stark And After Recent CMS Opinion

A Special Broadcast

THANK YOU FOR PARTICIPATING!

Presented by:

Alan S. Gassman and Lester J. Perling

agassman@gassmanpa.com

Lester.Perling@nelsonmullins.com