

Group Practice Definition

For purposes of the federal physician self-referral law (Stark), 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 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 42 C.F.R. Section 411.351.
- (c) **Range of care.** Each physician who is a member of the group, as defined at 42 C.F.R. Section 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 42 C.F.R. Section 411.351.
 - (4) For a group practice located outside of a HPSA (as defined at 42 C.F.R. Section 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 42 C.F.R. Section 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 42 C.F.R. Section 411.352 (this law); 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 the 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 rules for profit shares and productivity bonuses.**
- (1) Overall profits.
- (i) Notwithstanding paragraph (j) of this section, a physician in the group may be paid a share of overall profits that is not directly related to the volume or value of the physician's referrals.
- (ii) "Overall profits: means the profits derived from all the designated health services of any component of the group that consists of at least five physicians, which may include all physicians in the group. If there are fewer than five physicians in the group, "overall profits" means the profits derived from all the designated health services of the group.
- (iii) Overall profits must be divided in a reasonable and verifiable manner. 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:
- (A) Overall profits are divided per capita (for example, per member of the group or per physician in the group).
- (B) Overall profits are distributed based on the distribution of the group's revenues attributed to services that are not designated health services and would not be considered designated health services if they were payable by Medicare.
- (C) Revenues derived from designated health services constitute less than 5 percent of the group's total revenues, and the portion of those revenues distributed to each physician in the group constitutes 5 percent or less of his or her total compensation from the group.
- (2) Productivity bonuses.
- (i) Notwithstanding paragraph (g) of this section, a physician in the group may be paid a productivity bonus based on services that he or she has personally performed, or services "incident to" such personally performed services. that is not directly related to the volume or value of the physician's referrals (except that the bonus may directly relate to the volume or value of the physician's referrals if the referrals are for services "incident to" the physician's personally performed services).
- (ii) A productivity bonus must be calculated in a reasonable and verifiable manner. A productivity bonus will be deemed not to relate directly to the volume or value of referrals if one of the following conditions is met:

- (A) The productivity bonus is based on the physician's total patient encounters or relative value units (RVUs) personally performed by the physician.
 - (B) The services on which the productivity bonus is based are not designated health services and would not be considered designated health services if they were payable by Medicare.
 - (C) Revenues derived from designated health services constitute less than 5 percent of the group's total revenues, and the portion of those revenues to each physician in the group constitutes 5 percent or less of his or her total compensation from the group.
- (3) **Value-based enterprise participation.** Notwithstanding paragraph (g) of this section, profits from designated health services that are directly attributable to a physician's participation in a value-based enterprise, as defined at 42 C.F.R. Section 411.351, may be distributed to the participating physician.
- (4) **Supporting documentation.** Supporting documentation verifying the method used to calculate the profit share or productivity bonus under paragraphs (i)(1), (2), and (3) of this section, and the resulting amount of compensation, must be made available to the Secretary upon request.

[42 C.F.R. Section 411.352]

In an answer to a frequently asked question on its website, CMS has clarified that:

A **"physician practice"** is a medical practice comprised of two or more physicians organized to provide patient care services (regardless of its legal form or ownership). For example, a "physician practice" may be a group of physicians that practice together but do not meet all of the requirements of Section 411.352 for "group practices" for purposes of satisfying the requirements of the physician services and in-office ancillary services exceptions. We note that the provision of patient care services by employed or contracted physicians does not automatically cause an entity to become or be considered a "physician practice" (and, thus, a "physician organization"). For example, a hospital, which, in general terms, is an institution that provides medical, surgical, or psychiatric care and treatment for the sick or the injured, is not considered a "physician practice" or "physician organization" even though it employs or contracts with two or more physicians to provide patient care services to its inpatients and outpatients.