

## PHYSICIAN SELF REFERRAL PROHIBITION "STARK" STATUTE

### QUESTION:

Under federal law, can a physician practice establish a sleep center within the office for the purpose of diagnosing obstructive sleep apnea and other sleep disorders?

### RESPONSE:

#### Background:

Stated generally, the federal "Stark" statute prohibits physicians who have a "financial relationship" with an entity from referring their patients to the entity for "designated health services." The term "referral" in this context encompasses the request for, or ordering of, an item or service. If the physician orders an item or service which falls within the scope of a "designated health service," the entity cannot submit a Medicare or Medicaid claim for that item or service. Exceptions apply in certain limited situations.

#### Exceptions:

Designated health services include such items as:

- clinical laboratory services
- durable medical equipment
- home health services
- others

***The statute does not list diagnostic sleep disorder services as a designated health service, and nothing in the proposed regulations implementing the statute indicates that these diagnostic services should be so considered.***

Under current law and regulations, therefore, there is no prohibition to a physician's conducting sleep disorder diagnostic testing in his or her office, and submitting a claim to Medicare, Medicaid, or other health care programs for the service.

#### Discussion:

Of course, there can be no assurance that the claim will be paid, given differing coverage policies by different payors. In addition, there can be no assurance that the pending final "Stark" regulations will not change this interpretation. Finally, state laws on this issue differ greatly. This section does not constitute the rendering of legal advice, and each provider should consult competent health care counsel, familiar with physician self-referral prohibitions, regarding their individual situation.