

CLIENT ALERT

CMS Extends Deadline For Publication of Final Stark II, Phase III Rule

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As expected, CMS announced today that it is extending the timeline for publication of the final rule implementing the Stark Law (the "Phase III Rule") for one year. With this extension, the interim final rule issued on March 26, 2004 (the "Phase II Rule") will remain in effect until March 26, 2008, at which time CMS will publish the Phase III Rule.

The timeline for publishing a final regulation cannot exceed three years from the date of publication of the proposed interim final rule, unless there are "exceptional circumstances." CMS attributes the "numerous and varied" public comments received following publication of the Phase II Rule, as well as the substantial "interagency coordination" among CMS, the Office of the Inspector General, and the Department of Justice, (resulting from their joint authority to enforce the Stark Law), as the justification for the one-year extension.

This leaves unanswered for at least one more year critical and outstanding issues under the Stark Law, including: 1) the Law's applicability to Medicaid referrals and claims; 2) the potential for expansion of the physician recruitment exception to accommodate certain practical considerations; and 3) the potential narrowing of the in-office ancillary services exception to preclude certain referral practices that are understood to be deemed questionable by CMS.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.