Is it true that I am now allowed to give professional courtesy discounts under the new Stark regulations?

The final Stark II regulations issued by the Centers for Medicare and Medicaid Services (CMS) became final on July 26, 2004. The new regulations have loosened the prohibitions against giving professional courtesy discounts to a doctor and his or her family, but only under certain circumstances.

To qualify for the new exception, the arrangement must meet the following conditions:

1. The professional courtesy is offered to all doctors on your bona fide medical staff or in your local community without regard to the volume or value of referrals or other business generated between the parties;

2. The healthcare items and services provided are of a type routinely provided by you;

3. Your professional courtesy policy is set out in writing and approved in advance by the governing body of your practice. (For example: If you have a professional corporation, you would require a corporate resolution permitting this type of discount);

4. The professional courtesy is not offered to any doctor (or immediate family member) who is a federal healthcare program beneficiary, unless there has been a good faith showing of financial need;

5. If the professional courtesy involves any whole or partial waiver of any co-insurance obligation, the insurer is informed in writing of that reduction so that the insurer is aware of the arrangement; and (In Phase III the professional courtesy exception was revised to delete this notification requirement. CMS does state that it believes it is a prudent practice to provide such notification, and, in fact, insurers may actually require such notification. Therefore we recommend checking with your insurers on this topic)

6. The professional courtesy arrangement does not violate the anti-kickback statute or any billing or claims submission laws or regulations.

Be aware that some professional courtesy arrangements may violate the anti-kickback statute or the civil monetary penalties law against giving inducements to Medicare and Medicaid beneficiaries (section 1128A (a)(5) of the Act).

Private insurers may also have concerns about professional courtesy in the form of coinsurance waivers. The requirement to notify private insurers of a professional courtesy arrangement may provide an additional check against abusive arrangements.