

THE NEW TIMESHARE LICENSE EXCEPTION OFFERS MORE FLEXIBILITY

On January 1, 2016, the new Stark Law “timeshare license” exception became law. We reported on the proposed rule [here](#) and the final rule [here](#). Initially, the exception received somewhat mixed reviews, which resulted in some hesitancy to employ it. Now that the dust has settled, we believe that the exception presents significant advantages over timeshare leasing arrangements available under the Stark Law and Anti-Kickback Statute (“AKS”). In particular:

1. Term – A timeshare license is not required to be for a minimum term of one year. This may be a benefit to providers that are reluctant to commit to a long-term arrangement without knowing whether patient supply and demand will justify a longer term.
2. Scheduling – A timeshare license is not required to set forth a specific occupancy schedule or a description of the precise length of each occupancy period. This is a significant benefit as providers typically struggle to comply with the fixed schedule requirement under the timeshare leasing rules.
3. Minimum Occupancy Periods – A timeshare license is not required to include a minimum occupancy period (e.g., four hours at a time). When, for example, a provider is building a practice in a new location, it may make sense to keep the hours of use flexible at the outset.
4. Exclusive Use – A timeshare license is not required to provide for the exclusive use of space, equipment and personnel covered by the arrangement. This eliminates the burden of allocating specific exam rooms, equipment and personnel to specific providers during scheduled occupancy periods.

These advantages were adopted in recognition of the practical realities surrounding the way timeshare space is actually utilized. As such, we believe that compliance risk can be reduced and more effectively managed under the new timeshare exception when compared to rental arrangements structured under the Stark Law rental exception and the AKS lease Safe Harbor. The limitation of the new exception is that it only applies to situations where the provider is primarily engaged in evaluation and management (“E/M”) services. However, for many providers, E/M services constitute all or a vast majority of their timeshare situations. In such cases, we believe that the new timeshare exception may be the best choice.

If you would like additional information about this topic, please contact:

- Robert A. Hicks at (317) 977-1433 or at rhicks@hallrender.com;
- Andrew Dick at (317) 977-1491 or at adick@hallrender.com;
- Douglas J. Kochell at (317) 977-1412 or at dkochell@hallrender.com; or
- Your regular Hall Render attorney.

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