

From the publishers of the *New England Journal of Medicine*

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Changes to Stark Alter Physician Recruiting Rules

Physician recruiting first emerged as an industry separate from executive recruiting in the 1970s and the early 1980s. At that time, physician recruiting was a relatively unregulated activity. Hospitals had considerable latitude when it came to the types of recruiting incentives they could offer physicians, and hospital physician recruiting activities were not vigorously monitored by government agencies.

That began to change about 20 years ago as both the Internal Revenue Service and the Department of Health and Human Services issued rulings and opinions defining the circumstances under which hospitals could offer physicians recruiting incentives, the types of incentives that could be offered, and the types of physicians to whom incentives could be offered.

Additional Incremental Expenses

Subsequently, the so-called "Stark Laws" governing physician self-referrals also imposed physician recruiting guidelines. In 2004, regulations implementing the Stark Law compelled hospitals to revise a physician recruiting practice that had been standard procedure for a number of years. The regulation in question stipulated that a hospital funding recruitment for an existing medical group could only pay for "additional incremental expenses" that accrue to the group because of the new physician. It could not pay for a prorated share of the group's fixed overhead expenses such as office rent, equipment, or personnel, unless such expenses were a direct result of the new physician joining the group. This rule was intended to eliminate any financial benefit that physicians who are already established in the group might gain when a hospital assists the group to recruit physicians.

The Problem of Physician Attrition

Unfortunately, this rule created problems for many hospitals and medical practices. A challenge arises when an existing medical group loses a physician to retirement, death, or relocation. Prior to the 2004 Stark regulation, a hospital could assist an established medical group in finding a new physician by providing a salary or income guarantee to the incoming physician and allocating to the new physician a pro rata share of existing office space, equipment, personnel, and other expenses associated with the new physician's practice for one year.

When that arrangement was prohibited, an established group that lost a physician would have to absorb that physician's share of the overhead and could get no relief from its affiliated hospital. This may not be a serious financial consideration in a large group practice, but it is in a smaller one, where physicians can see overhead increase by 50 percent upon departure of a colleague from the practice. Without assistance from the hospital, these groups may not be able to support higher overhead costs created by the sudden absence of a physician. Therefore, the existence of the entire group is threatened.

In addition, the hospital, hampered by this regulation, could be obliged to recruit into a solo setting where it would be able to front the new physician's overhead expenses. However, very few physicians are attracted to solo settings in rural areas. Long-term, the Stark "incremental expenses" regulation had the potential to undermine recruiting efforts in rural areas.

New Regulations Bring Relief

In September 2007, Centers for Medicare & Medicaid Services (CMS) released final regulations implementing Phase III of the

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Stark Law, which is referred to as the Final Phase III Regulations. Reacting to comments from the field, including those submitted by Merritt, Hawkins & Associates, the 2007 Stark regulations create an exception to the “incremental expenses” rule. In a case where an established medical group in a Health Professional Shortage Area (HPSA) or a rural area is replacing a deceased, retiring, or relocating physician, the hospital *can* pay for a prorated share of the group’s fixed overhead expenses, such as office rent, equipment, or personnel, not to exceed 20 percent of the practice’s aggregate costs. A rural area is any area not defined as a metropolitan statistical area by the U.S. Census Bureau.

This restores, to some extent, standard physician recruiting practices and incentives that have been in place for years and which have been essential to attracting physicians to rural and other traditionally underserved areas. Hospitals in rural areas and HPSAs should no longer feel confined to recruiting into solo settings, but should be able to partner with established groups to help create the most competitive recruiting packages possible. It is gratifying that the CMS responded to comments generated by those who felt handicapped by the “incremental expenses” rule, and that the rule was modified to conform to existing physician recruiting realities.

New Rule on Non-Competes

Other changes made in the Final Phase III Regulations also affect physician recruiting. One of the more controversial provisions of the “physician recruitment exception” to the Stark Law is the prohibition against a group practice imposing practice restrictions on a newly recruited physician. The Final Phase III Regulations significantly relax these prohibitions. The preamble to the Final Phase III Regulations acknowledges that a number of practice restrictions are permissible, including restrictions on moonlighting, prohibitions on soliciting patients and/

or employees, and others. The Preamble even acknowledges the ability of a group practice to impose a *limited reasonable non-compete clause* on newly recruited physicians, and indicates that state law restrictions on non-compete agreements would likely be helpful in determining the reasonableness of the clauses. The Final Phase III Regulations also address the establishment of a geographical service area and other matters relevant to physician recruiting.

The Final Phase III Regulations were set to become effective December 4, 2007. It is advisable to review physician recruitment arrangements to assure that they are structured in compliance with the requirements of the Stark Law as revised by the Final Phase III Regulations.

This article is for informational purposes and is not intended as legal consultation or advice. All physician recruiting arrangements should be reviewed and approved by attorneys familiar with this area of the law.

Source: Bales Nelson is executive vice president of Merritt, Hawkins & Associates, a national physician search and consulting firm and a division of AMN Healthcare, the largest health care staffing firm in the United States. He can be reached at bnelson@mhagroup.com or (800) 876-0500.

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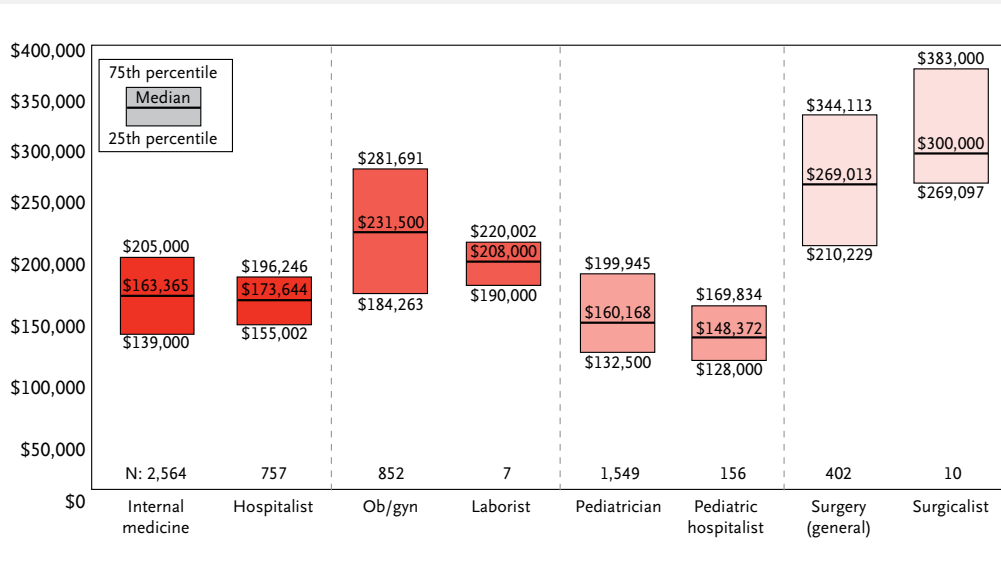
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Thank you.

MARKET WATCH

Total Cash Compensation for Hospitalist Specialists and Their Counterparts

With the exception of surgicalists, the newer specialties of hospitalists, laborists, and pediatric hospitalists make less than their established counterparts.



Source: Sullivan, Cotter & Associates, 2007 Physician Compensation and Productivity Report, as published in Managed Care, January 2008.

What's New at NEJM?

THE RESULTS OF THE "2008 HOW PHYSICIANS SEARCH FOR JOBS" STUDY ARE IN!

Zeldis Research Associates, Inc., conducted an independent, blind study that was mailed to over 2,000 physicians, fellows, and residents in internal medicine and the internal medicine subspecialties.

Find out which sources physicians use to look for jobs, which print and online sources they value most, what they look for in a job website, and much more!

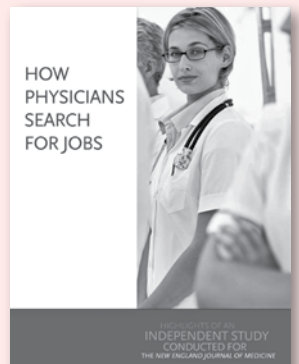
You may download a PDF of the study highlights at <http://www.nejmjobs.org/content/employers/jobsearchstudy08.pdf>, or e-mail us at nejmjobssupport@nejm.org to receive a hard copy.

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For more information, contact the NEJM at (800) 635-6991 or at nejmjobssupport@nejm.org.



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**Association of Staff
Physician Recruiters
August 10–13, 2008
Baltimore, MD
www.aspr.org**

**National Rural
Recruitment and
Retention Network
October 14–16, 2008
Omaha, NE
www.3rnet.org**

**Northeast Physician
Recruiters Association
October 22–24, 2008
Long Branch, NJ
cbourbea@stfranciscare.org
lhogan@meridianhealth.com**

**Interscience Conference
on Antimicrobial Agents
and Chemotherapy*
October 25–27, 2008
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www.icaac.org**

**Midwest Recruiters
Meeting
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Chicago, IL
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PROMOTIONAL NOTES/NEWS

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ISSUE	CLOSING DATE	SPECIALTIES
September 11, 2008	August 22, 2008	CD, D, END, ENT, FM, GE, HEM/ONC, HOSP, ID, IM, NEP, N, ORS, PUD, DR, R, RHU, and U

Contact us at (800) 635-6991 or nejmads@nejm.org to reserve your ad space for this issue.

*Counts are estimates only and are subject to change based on data collected by the AMA and SK&A.

**Processing fees may apply to posting your ad on the searchable part of the website.



Congratulations to Tricia and Nicolino!

Tricia Griffin, one of our NEJM recruitment advertising sales representatives, married Nicolino Zullo on July 19, 2008, at the Andover Country Club in Andover, MA. The newlyweds will honeymoon in Italy for two fun-filled weeks. Tricia’s new e-mail address is tzullo@nejm.org and her phone number will remain the same, (781) 434-7417. Congratulations and best wishes!

Correction: Please note that the legend in the Market Watch section on page 3 of the Vol. 16 No. 3 May/June 2008 issue of *Recruiting Physicians Today* newsletter contained an error. The red bars on the graph indicate the total active U.S. medical school senior applicants matched (to first-year positions), and the gray bars reflect the total active U.S. medical school senior applicants. The PDF of the newsletter that appears online has been corrected and can be found at www.nejmjobs.org/content/rpt/pdf/mayJune08.pdf. We apologize for any confusion.