



Administrator
Washington, DC 20201

MAR 14 2002

Mr. Rick Pollack
Executive Vice President
American Hospital Association
325 Seventh Street, NW., Suite 700
Washington, DC 20004-2802

Dear Mr. Pollack:

Thank you for your letter requesting the Centers for Medicare & Medicaid Services (CMS) to confirm the accuracy of certain guidance that AHA has drafted. We applaud your efforts to provide "model practices" guidance for your members, and we are grateful for the opportunity to share our views with you.

The memorandum enclosed with your letter sets forth various examples of business and social activities paid for by a hospital, all of which you believe would invoke the physician self-referral prohibition. The analysis set forth in the memorandum assumes that the facts in each scenario would preclude the use of the following exceptions to the Stark prohibition: the bona fide employment relationships exception, the personal services exception, the fair market value exception, and the exception for medical staff incidental benefits. You state that you are most interested in confirming which types of activities can appropriately fit within the exception for remuneration unrelated to provision of designated health services (DHS).

We agree, given the assumptions you ask us to make, that there are only two exceptions which potentially apply to the examples you describe: the exception for nonmonetary compensation under \$300 and the exception for remuneration unrelated to DHS. In general, we agree with the analysis you provide regarding matters covered in the Phase I final rule (e.g., the exception for nonmonetary compensation under \$300). However, we cannot comment at this time with respect to the potential application of the exception for remuneration unrelated to DHS. As you may know, CMS is currently in the process of drafting and reviewing the Phase II Stark regulations, which will address the "unrelated to DHS" exception. Since, as your letter concedes, all inpatient and outpatient hospital services are DHS, the breadth of the exception will depend to great extent on the final rulemaking. We expect to revise the proposed exception and believe that it is neither wise, nor of much practical use to the industry, to furnish an opinion on an issue about which the Agency has not yet made a final decision.

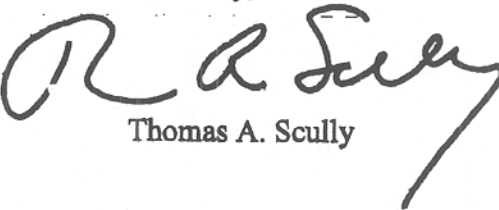
Although we understand that your member hospitals would prefer certainty in structuring these arrangements—we note that with respect to these arrangements—their position today is no different than it has been at any time since the physician self-referral prohibition became effective on January 1, 1995, with respect to inpatient and outpatient hospital services. In the

absence of a final rule on the scope of the "unrelated to DHS" exception, hospitals may base their activities on any reasonable interpretation of the statutory language.

The Phase II final rule will fully address the comments we received regarding the "unrelated to DHS" exception as it was proposed in the January 1998 notice of proposed rulemaking. Please be assured that in drafting the Phase II regulation, CMS will seriously consider the examples you set forth in your correspondence, and the Agency is making every effort to promulgate that final rule as soon as possible.

I appreciate your concern in this matter and hope this information is helpful.

Sincerely,

A handwritten signature in black ink, appearing to read "T. A. Scully". The signature is written in a cursive, flowing style with a long, sweeping tail on the final letter.

Thomas A. Scully