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Lack of Clarity: CMS Announces It Will Not Clarify the Definition of "Entity" Under Stark

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In an effort to curtail physician-ownership of entities providing designated health services (DHS) under arrangements with hospitals, CMS amended the definition of "entity" under the Stark regulations to include, not only those entities that bill for DHS, but also those persons or entities that "perform" DHS, effective October 1, 2009. See ["Final IPPS Rule Contains Significant Stark Changes."](#) This change was promulgated as part of the Fiscal Year (FY) 2009 Inpatient Prospective Payment System (IPPS) Final rule. CMS declined, however, to define "perform" as part of that rulemaking and, instead, stated that the term would have its "common" meaning. This left providers to question what actions would constitute performance of a service. As part of the Calendar Year (CY) 2010 Physician Fee Schedule Final Rule, CMS solicited comments in which the agency sought industry views regarding alternative approaches for the definition. Noting that it received only 9 comments in response to its solicitation, [CMS announced](#) on June 25, 2010, that the comments did not convince the agency that it needs to provide any additional guidance or to engage in rulemaking to further define the term "entity."