

SEVEN THINGS YOU SHOULD KNOW ABOUT THE STARK LAW

By: Bruce A. Smith

We're all generally familiar with the Stark Law: A physician may not make a referral of a designated health service to an entity in which the physician holds a financial relationship unless an exception applies. Designated health services include lab, radiology -- both the technical and professional components, PT and OT, DME and inpatient and outpatient hospital services, among others. A financial relationship encompasses both an ownership or investment interest and a compensation relationship -- including an employment, independent contractor, lease, or other financial relationship. The penalties for violation of the Stark Law range from denial of payment to substantial civil monetary penalties.

1. No Enforcement -- Yet. To date, there have been no reported enforcement actions involving the Stark Law. However, the Stark II regulations, which were originally released in January 1998, are expected to be finalized in late spring or early summer this year. Once this occurs you should expect that the "compliance spotlight" will shine on self-referral issues.

2. Only Relationships Matter. The Stark Law is a strict liability statute. Knowledge of the Stark Law or the parties' illegal intent or other circumstances suggesting that the relationship increases cost or utilization is absolutely irrelevant. Unless the financial relationship falls within an exception, the physician may not make the referral and the entity may not bill Medicare or Medicaid for the service. As an aside, many find it extremely ironic that a statute which attempts to establish a bright-line standard is itself highly ambiguous and confusing.

3. The Stark Law Regulates Conduct Within a Physician's Own Practice. A physician in solo practice who offers designated health services -- such as chest x-rays, lab, etc. -- to his or her patients must comply with the requirements of the Stark Law as a condition to billing Medicare or Medicaid for the service. Among other requirements, the physician must be present in the office suite in which the services are being furnished at the time they are being furnished.

4. Self Referrals of DME are Prohibited. Physicians can never supply durable medical equipment (excluding infusion pumps) to their Medicare or Medicaid patients. However, in the proposed Stark II regulations, a physician may provide crutches at cost.

5. All Financial Relationships with a Hospital Will Implicate Stark. All financial relationships between a physician and a hospital to which the physician admits will come within the scope of the Stark Law. These relationships include medical directorships, space or equipment leases, income guaranties, joint ventures, among others. Make sure that someone is paying attention to the Stark Law (and the antikickback law as well) when reviewing these relationships.

6. Fair Market Value is the Key. If you have financial relationships -- including space or equipment leases or subleases, joint venture

agreements, partnership agreements, medical directorship agreements, consulting and independent contractor agreements, employment agreements, etc. -- with any person who makes referrals to you or receives referrals from you, the payments must be based on fair market value. If not, you will have a Stark Law problem and a likely antikickback problem.

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7. New York has an All Payer Mini-Stark Law. New York has a self-referral prohibition covering radiology, pharmacy, and lab services which generally parallels the Stark Law. Unlike the Stark Law, which covers only Medicare and Medicaid reimbursed services, the New York law is all-payer and will cover services reimbursed by all payers including HMOs, insurance companies, and other commercial payers.

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