

Stark Law and Anti-Kickback Update

The Stark law, in the absence of an applicable exception, prohibits a physician from referring a Medicare or Medicaid patient to an entity in which he, or an immediate family member, has a financial interest for the provision of any of 11 designated health services ("Stark law - Information on physician investment," 2010). Anti-kickback laws govern the rules related to physician referrals. Hospitals can face hefty penalties and fines if they make leasing agreements with physicians that base the lease on the amount of income the doctor receives. If the hospital refers work to the doctor, it has a financial incentive to collect more rent, which, if not done correctly, will violate the law and incur penalties.

Likewise, if a physician has a financial interest in the hospital, clinic, lab, etc., s/he must carefully disclose this to the patient before referring. Violation of the anti-kickback statute is a crime, and could involve jail time, along with suspension from government funded programs, and possibly penalties. ("Stark Act,")

The Future

The Patient Protection and Affordable Care Act (PPACA) made changes to the Stark Law. Previously, an exception to the law allowed a physician who had an interest in the whole hospital (rather than a department, lab, etc.) to refer patients to that hospital. Also, Stark allowed a rural exception, allowing physicians in a rural area to refer to hospital which the doctor had an interest.

Effective December 31, 2010, PPACA eliminated the whole hospital exception for physician ownership and hospital ownership by physicians in the rural provider

exception. PPACA grandfathers physician-owned hospitals with a Medicare provider agreement, but places substantial restrictions on grandfathered hospitals. Such hospitals are prohibited from increasing their total physician ownership percentages and increasing the number of beds, operating rooms or procedure rooms. Of course, physicians may seek an exception to the elimination of this exception. An exception could be granted if the hospital is located in a high growth area and serves a high percentage of Medicaid patients. Grandfathered hospitals must file annual reports to identify physician owners. Further, they must disclose to patients (who receive referrals) the hospital is physician-owned. This information must be on the hospital's website and advertising materials. Hospitals must require such disclosures as a condition to medical staff membership and privileges.

(Clark, 2010)

More Stark Changes

PPACA changed rules relating to radiology services, such as MRI, PET or CT scanning. When a patient is referred to an in-house MRI, PET or CT scan, the referring entities has new duties. Effective last January, 2010, the referring physician is required to provide the patient with a written list of suppliers in the area in which the patient resides and inform the patient in writing that he or she may obtain the service from an entity other than the referring physician. Oddly, this rule was scheduled for publication August 3, 2010. CMS currently is soliciting comments on the advisability of extending the new Stark requirements past MRI, PET and CT scans.

The doctor must disclose his/her interest at the time of the referral. There are several requirements for the written disclosure. It must include a list of at least ten

suppliers. The patient will have the name, address, phone number and driving distance (from the physician's office) for the 10 competitors listed. The competitors may be within a 25-mile radius from the doctor's office. The patient must sign the disclosure, and the doctor's office must keep a record of the patient's signature.

(Clark, 2010)

Conclusion

PPAC has made the Stark Laws compliance more difficult. The standards have increased. Physicians and hospitals must take a new look at their provider agreements, and update them according.

References

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