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Consequences of the Stark Law

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Abstract

The Stark Law is a well-intended law that arose due to problems with physicians referring patients to entities which the doctor had a financial incentive. A patient may have been sent to the doctor's own lab, when another lab charged less. The law is complicated, frequently modified, and yet doctors are presumed to know it immediately. Ignorance is not an excuse. Compliance is difficult and requires training. Failure to comply results in hefty fines. Although the law was designed to reduce medical costs and prevent self-dealing, it now prevents physicians from providing discounts to its poorest customers.

Consequences of the Stark Law

The Stark Law governs rules related to physician referrals. Hospitals can face hefty penalties and fines if they make leasing agreements with the physician and base the lease on the amount of income the doctor receives. If the hospital refers work to the doctor, they have a financial incentive in collecting 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,")

This paper explores the unanticipated consequences of the law, some costs associated and personnel training issues.

Unanticipated Consequences

Although Medicaid and Medicare patients may be the most deserving to receive a discount on their medical bills, the Federal anti-kickback statutes prohibit providers from routinely waiving Medicare beneficiary fees, such as deductibles, coinsurance, or copayments ("Medicare and Medicaid Patient Protection Act of 1987,"). One reason for the rule is “the expressed intent of Congress that the costs of services covered by the Program will not be borne by individuals not covered, and the costs of services not covered by the Program will not be borne by the program.” (*Medicare Provider Reimbursement Manual*) The concern is medical

providers, if allowed to waive costs for Medicaid, might charge non-Medicaid patients more to recover for the lost deductibles, copayments, etc.

Another unintended consequence arises in the field of health information technology. In the age of computerized medical records, it serves patients, providers and society to implement uniform electronic medical records. Hospitals can communicate instantaneously with physicians regarding real time health records. Medication errors can be reduced or eliminated via electronic health records (EHR). Some providers cannot afford to implement the records. In fact, they have few financial incentives to do so. While EHR's reduce errors and provide easy access to records, they also cut out redundant services, which can reduce income for providers. Small physician practices, which constitute the majority of care in the United States, often cannot justify the expense (Weiss, 2009).

Hospitals could provide financial help and incentives to doctors to provide this important societal function, but the Stark Laws prohibit this. Under Stark I or II, hospitals or other healthcare organizations may not give IT hardware, software or support worth more than $300 to a physician referring Medicare patients to that hospital. Thus, under the initial Stark I and II rules, hospitals must rely on physicians to independently implement office EHRs that will be interoperable with hospital systems, as well as other physicians, in the region or nation (Weiss, 2009).

Policy changes are underway. The proposed Anti-Kickback Safe Harbors for e-Prescribing and EHRs may provide some answers. In the proposed laws are changes which allow hospitals to fund doctors offices who wish to implement EHR (Weiss, 2009).

Costs Associated with Stark

Stark provides for civil penalties not to exceed $100,000 for each "arrangement or scheme" that a person knows or should know has a principal purpose to violate the statute. This means that ignorance is not an excuse. Providers can be fined even if the violation was inadvertent. In addition, the government may withhold payments for prohibited referrals. The government may prosecute to recoup past payments made in violation of Stark. Phase II Regulations will implement these penalties (Gordon, 2010).

Stark is complicated. It has had many revisions throughout the years. Keeping abreast of the rules adds time and training costs. These complications and training are discussed, *infra.*

Training Personnel

It seems simple enough that the Stark law prohibits physicians from self-referring patients to health services which the physician has a financial interest. Unfortunately, it is more complicated than this, with confusing exceptions and gray areas. Training must be ongoing and comprehensive to prevent violations. The last section of this paper discusses some of the new recent changes to Stark, which providers should know.

Agreements between Providers and Referral Sources must be in Writing

Stark allows exceptions that allow financial dealings between providers of designated health services (DHS) and referral sources. If an exception is allowed, it must be in writing. The following exceptions to the Stark law require a written, signed agreement: office space and equipment rental, personal service arrangements, physician recruitment arrangements, group practice arrangements and fair market value compensation arrangements ("Exceptions to the referral prohibition related to compensation arrangements,"). If the provider inadvertently does not draft a provider agreement, the exception will not apply, and s/he could incur financial penalties.

Per-click Leasing Arrangements

As of October 1, 2009, physician referral sources and providers of DHS are no longer permitted to have per-click relationships for office space and equipment leases. In the past, for example, a hospital or other entity could lease medical equipment to a provider. A per-click arrangement requires the lessee to pay the lessor each time the equipment is used. This arrangement is prohibited under the latest revision to Stark ("Exceptions to the referral prohibition related to compensation arrangements,"). The temptation for per-click relationships is obvious. With income generated for usage of medical technology, it could be over utilized.

Percentage-based Arrangements

So long as the arrangement does not involve per-click relationships for office space and equipment leases, DHS providers and referrals can enter into percentage-based arrangements, so long as they were allowed prior to October 1, 2009. Percentage-based management and billing

service relationships are still permissible so long as they satisfy certain criteria set forth in the Stark law and anti-kickback statute, although there are indications this could change in future revisions (Becker, Kim, & Smith, 2009).

Lithotripsy Arrangements

Lithotripsy is not considered a DHS, so it does not fall under Stark. However, this fine point is more complicated than it seems, and certainly too complicated to include here.

Professional Courtesy

The longstanding tradition of extending professional courtesy to physicians and their family members is still allowed.

Retention Payments

Certain Hospitals (federally qualified health center or rural health clinic) may pay physicians to stay within a particular geographic area that has a physician shortage.

Publicly-traded Company Exception

The Stark law allows physicians to purchase securities in publicly traded organizations that have stock holder equity exceeding $75 million.

Isolated Transactions

Physicians may engage in an isolated financial transaction with a DHS entity without violating the Stark law under strict conditions (Becker et al., 2009).

Non-monetary Compensation Benefits

A physician may receive nonmonetary compensations such as parking, meals, training, etc., up to $355 per year. This number is adjusted annually for inflation (Becker et al., 2009).

Summary

The above changes to Stark provisions exemplify its complicated and changing nature. Extensive time and training is mandated to remain in compliance with this law.

Conclusion

The Stark Law is complicated. To understand it and remain in compliance, health care providers require training and diligence. A provider who fails to comply, whether intentionally or inadvertently, is subject to heavy fines. Although well-intended, it prevents providers from allowing discounts to some of the poorest patients.

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