

ATLANTA HOSPITAL NEWS

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Health Care Reform Amends Provisions of the Stark Self-Referral Law

Health care reform would not be complete without revision to the Stark self referral law (Section 1877 of the Social Security Act) (“Stark”), a law which has undergone several “phases” of revisions since its inception. President Obama’s recently enacted health care reform bill, the Patient Protection and Affordable Health Care Act, as modified by the Health Care and Education Reconciliation Act (the “Act”), also revises Stark, in several important ways.

Specifically, the Act places new restrictions on the whole hospital exception to Stark, effectively preventing the formation of new physician-owned hospitals and restricting expansion on currently existing physician-owned hospitals. The Act also amends the In-Office Ancillary Services exception to Stark that requires physicians referring patients for certain advanced imaging services to notify those patients of other suppliers of the same services.

Physician-Ownership in Hospitals Restricted

In order to qualify for the whole-hospital exception to Stark, a hospital must now meet the following additional requirements:

- The hospital must be a physician-owned hospital with a Medicare provider agreement in operation as of December 31, 2010. This requirement effectively ‘grandfathers in’ physician-owned hospitals currently existing.
- Unless it meets the exception discussed below, the hospital may not add operating rooms, procedure rooms, or beds.
- The hospital must submit annual reports to the Secretary of the Department of Health and Human Services (“HHS”) identifying the owners/investors and the nature of the investment. The information will be published on the Centers for Medicare and Medicaid Services (“CMS”) website.
- The hospital must require that any referring physician owner/investor disclose that the referring physician (or treating physician) has an ownership interest in the hospital to the patient being referred, in a manner that gives the patient enough time to make a meaningful decision regarding the receipt of care.
- The hospital must disclose that it is a physician-owned hospital on its website and in any public advertising.
- The interests offered to physicians must be bona fide (e.g., the hospital must offer the same investment terms to physicians and non-physicians, and the hospital may not offer loans or financing to physician-owners for the investment).

- If the hospital admits a patient and does not have any physician available on premises the hospital must disclose that fact and the patient must sign a written acknowledgment of that fact.
- The hospital may not be converted from an ambulatory surgery center going forward from the date of enactment of the legislation.
- The hospital will be subject to annual audits by the Secretary to ensure compliance with the regulations.

An “applicable hospital” or a “high Medicaid facility” may apply for an exception (once every two years) from the prohibition on expansion of facility capacity. A “high Medicaid facility” is one which is not the sole hospital in the county and which for three prior years has an annual percent of total Medicaid inpatient admissions that is greater than such percent with respect to such admissions for any other hospital located in the county.

An “applicable hospital” is one that:

- in the past five years, the county in which the hospital is located has had a population increase of at least 150% of the population growth of the state;
- the hospital’s annual percent of total Medicaid inpatient admissions is equal to or greater than the average percent of such admissions for all hospitals located in the county in which the hospital is located;
- the hospital does not discriminate or allow its physicians to discriminate against beneficiaries of federal healthcare; and
- the state in which the hospital is located has a lower average bed capacity than the national average and the hospital’s average bed occupancy rate is greater than that of the state in which the hospital is located.

Any permitted increase in facility capacity may only occur on the main campus of the hospital and may not exceed 200% of the number of such operating rooms, procedure rooms, or beds existing as of the date of enactment of the legislation.

Physician Notification Requirements

Amending the Stark law’s In-Office Ancillary Services exception, the Act requires a referring physician to inform patients in writing, at the time of a referral, that the patient may obtain specified imaging services from a person other than the referring physician, a physician who is a member of the same group practice as the referring physician, or an individual directly supervised by the physician or by another physician in the group practice. The referring physician must provide the patient with a written list of suppliers who furnish such services “in the area in which the patient resides”.

The advanced imaging services include MRI, CT, and PET. The amendment also authorizes the Secretary of HHS to expand the notice requirement to include those designated health services in the Stark category of “radiology and certain other imaging services”.

While the new statute states that the notice requirements are effective as to any service provided after January 1, 2010, clearly, physicians could not comply with the provision until the law’s enactment and signature by the President. A January 1, 2010 effective date would call into question the legality of all referrals otherwise protected under the In-Office Ancillary Services exception since January of this year. CMS is expected to issue clarifying guidance regarding the enforcement date of this statutory provision.