

3 Ways Stark Law Impacts Your Practice

ARTICLE | MARCH 27, 2013 | BY DANIEL CASCIATO



How well do you understand Stark Law? The legislation was initially created to curb perceived unnecessary referrals and over-utilization of services by physicians within groups or at facilities to referral recipients with which they have ownership or financial interests. It can impact your practice in very specific ways. Here, *MOT* reviews three common scenarios in which Stark Law applies to your practice.

Scenario #1: You refer Medicare or Medicaid and other types of patients

One misunderstanding related to Stark Law deals with Medicare and Medicaid. Many practices mistakenly believe that if their patients are not Medicare or Medicaid recipients, they don't need to worry about Stark.

"This is only half true," says Lance O. Leider, an attorney with The Health Law Firm in Altamonte Springs, Fla. "While Stark Law may not apply, many states have mini-Stark laws that pick up the slack and apply to cash and insurance patients."

For example, Florida has the Patient Self Referral Act that prohibits referrals for non-Medicare and Medicaid patients. Many times these laws incorporate the exceptions found in federal law and apply them to the referrals not covered by Stark. Miller also notes that some states, like California, apply their mini-Stark laws to all patients, regardless of payor source so that patient referrals are still impacted even if the Stark Law does not apply.

In addition, Stark does not apply to referrals for other types of federal health care program patients, such as Veterans Administration, Railroad Retirement Board, Public Health

Services and other federally-funded health programs.

Wayne J. Miller, an attorney with Compliance Law Group based in Southern California, adds that Stark Law was modified recently to enable doctors and hospitals to participate in Medicare accountable care organizations (ACOs) together.

“The law is essentially waived with respect to transactions necessary to form and operate an ACO,” he says.

“Transactions that fall outside ACO operations, however, are still subject to Stark.”

Stark Law provisions also apply when a practice has an ownership or other financial arrangement with a referral recipient that provides certain “designated health services” (DHS) to a Medicare patient.

“DHS includes ancillaries like radiology, physical and other therapy services, laboratory as well as DME and in- and outpatient hospital services,” says Miller. “The specific DHS services are defined by CPT code, which CMS lists and updates annually.”

If Stark Law is implicated, a referral is prohibited unless an exception applies, adds Miller. As noted earlier, there are many exceptions for a number of common financial transactions, such as service contracts and leases, but there are standards that must be met to rely on these exceptions.

Miller recommends that practices use a Stark law checklist before entering into any type of financial arrangement with a referral partner. This may be as simple as identifying if any of the potential or actual referrals involve Medicare patients and also involve a DHS. The checklist should also include the requirements of the relevant state Stark-like law as well.

“If it appears that Stark applies, then all of the requirements of an applicable exception under both federal and state law must be verified if the transaction is to move forward,” he says. “Parties to both sides of a transaction often turn to counsel to determine if an exception is met.”

(Read MOT's article "[How to Avoid Being Banned by Medicare](#)")

Scenario 2: Your landlord is a referral source

In this scenario, Stark Law impacts your practice because your office lease will be subject to scrutiny, according to attorney Matthew R. Fisher of Mirick, O'Connell, DeMallie & Lougee LLP, based in Worcester, Mass.

“The lease must comply with all of the elements of the Stark Law lease exception,” he explains. “While it is necessary to meet every single element of the exception, in this scenario the parties would need to be especially careful to justify the fair market value of the lease amount and be able to demonstrate

that the lease amount in no way accounts for the volume or value of referrals between the parties.”

To be clear, Stark Law does not prevent the parties from being able to enter into the leasing arrangement. Healthcare attorney Michele Madison from Morris Manning & Martin in Atlanta, points out that the law provide an exception for lease arrangements. Therefore, if the lease arrangement satisfies all of the elements of the lease exception to the Stark prohibition, the lease arrangement will be permissible.

“Stark prohibits physicians that have direct or indirect financial relationships with entities that bill Medicare for designated health services from referring Medicare patients to the entity, unless an exception to the law applies,” she says.

However, she adds, “all of the elements, including the required signature and rental amount being set at fair market value must be satisfied.”

(Read MOT’s article [“Understanding Stark Law: The Basics for Leasing”](#))

Scenario 3: Your referral source hires one of your physicians as it medical director

If a referral source's hospital hires one of your physicians as a medical director, Stark does provide an exception to its general prohibition for professional services. Therefore, according to Madison, a written agreement between the hospital and the medical director would be negotiated in exchange for fair market value consideration.

“The agreement would identify the services to be rendered by the physician and the services must be commercially reasonable based upon the needs of the hospital,” she says.

“The agreement must be in writing for the term of at least one year and signed by both parties.”

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