Stark Law and Anti-Kickback: What Physicians Should Know

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If you have federal health plan patient, you need to pay careful attention to the rules of the Stark Law and the federal Anti-Kickback Statute.

Source: Physicians Practice

One of the more common questions I am asked about federal healthcare statutes and regulations under Stark Law and the Anti-Kickback Statute (AKS), is a simple one: "What law will apply to my practice and patients."

Clients often are told that Stark Law and the AKS only apply to Medicare and Medicaid. If a practice only takes workers' compensation, for example, Stark Law and the AKS don't apply. But that's not the whole story.

The Stark Law, 42 USC § 1395nn, only applies to Medicare and Medicaid. The AKS, 42 USC § 1320a-7b(b)), applies to any federal healthcare program. This is because the Stark Law statute and the AKS were enacted at different times and are worded differently.

The Stark Law statue is located in the Medicare and Medicaid section of the U.S. Codes and states, "the physician may not make a referral to the entity for the furnishing of designated health services for which payment otherwise may be made under this title." Originally, Stark Law specifically applied only to Medicare, but was later modified to include certain portions of Medicaid programs.

The language of the AKS on the other hand, applies to "any item or service for which payment may be made in whole or in part under a federal healthcare program." "Federal healthcare program" is specifically defined in the statute:

For purposes of this section, the term "federal healthcare program" means—

(1) any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States
(2) any state health care program, [which may be jointly funded by Medicaid statutes]

The AKS definition covers many more programs than Stark Law; many of these, you may not know exist: Railroad Employees National Health and Welfare Plan, Federal Employees Health Benefits Program (FEHB) U.S. Public Health Service, Indian Health Service, Federal Health Program for Alaska Natives, State Children's Health Program (CHIP or SCHIP), Military Health System including Civilian Health and Medical Program for the Uniformed Services (TRICARE), Veterans Health Care (VA), Office of Workers' Compensation Program, federal prison hospitals, federal black lung benefits, state legal immigrant impact assistance grants, federal pre-existing condition insurance plans, Federal Reimbursement of Emergency Health Services to Undocumented Aliens, Ryan White AIDS/HIV Program, Health Services Corps, Health Systems for Peace Corps Volunteers, and U.S. Merchant Marine Health Services.

Thus, when considering whether your practice is structured to be in compliance with Stark Law, it is important to consider whether any of your patients are covered by any of these programs. If so, you should take steps to also comply fully with the AKS.

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