Stark Compliance is Necessary and Punishment is Harsh

If you think non-compliance with Stark Law is no big deal, think again. There are consequences for ignoring it.

Source: Physicians Practice

Among the many complicated healthcare laws that apply to physicians treating patients is the physician self-referral law, commonly referred to as "Stark Law". This law affects the manner in which physician practices compensate their physicians. Unfortunately, many practices are not compliant with Stark, whether intentionally or not. However, the repercussions for violating Stark can be severe and every group practice should review its compensation arrangement to assure compliance.

Generally, Stark:

• Prohibits a physician from making referrals for certain designated health services (DHS) payable by Medicare to an entity with which he (or an immediate family member) has a financial relationship (ownership, investment, or compensation), unless an exception applies. This includes the physician's own medical practice.

• Prohibits the entity from presenting or causing to be presented claims to Medicare (or billing another individual, entity, or third party payer) for those referred services.

• Establishes a number of specific exceptions and grants the Secretary of Health and Human Services the authority to create regulatory exceptions for financial relationships that do not pose a risk of program or patient abuse.

The following items or services are DHS: clinical laboratory services; physical therapy services; occupational therapy services; outpatient speech-language pathology services; radiology and certain other imaging services; radiation therapy services and supplies; durable medical equipment and supplies; parenteral and enteral nutrients, equipment, and supplies; prosthetics, orthotics, and prosthetic devices and supplies; home health services; outpatient prescription drugs; inpatient and outpatient hospital services. An exact list of CPT codes covered by the Stark law can be found here.

Referrals within a physician practice for DHS can still be made as long as an exception to Stark is satisfied. The most common exception is known as the "In-Office Ancillary Services" (IOAS) exception, which can only be used by practices that satisfy Stark's "group practice" definition. Among the many requirements of group practice is that the compensation arrangements among the physicians be carefully structured so no physician who is a member of the group practice may directly or indirectly receive compensation based on the volume or value of his or her referrals, except as allowed under Stark specifically.

Formulas that a group practice puts into place must be careful structured to assure Stark compliance. Common approaches for distribution of a productivity bonus related to DHS is one where a bonus is based on the physician's total patient encounters or relative value units (RVUs), or bonus is based on the allocation of the physician's compensation attributable to services that are not federal DHS. Groups that isolate their DHS income and distribute it as profit also need to be very careful. Safe ways to divide such income is on a per capita basis (per member of the group or per physician in the group) or based on distribution of the group practice's revenues attributed to services that are not federal DHS.

Although one rarely hears about enforcement of Stark provisions, in September 2017, the U.S. Attorney's Office for the District of South Carolina settled with Family Medicine Centers of South
Carolina based partially on allegations that the practice had used an internal compensation approach that violated the Stark Law. The case was raised through a Qui Tam lawsuit brought by former physician employee. Apparently, among other violations, the physicians in the practice were paid a percentage of the value of laboratory and other diagnostic tests (DHS) they personally ordered through the practice. The consequences for violating the law were harsh: The medical center agreed to pay the government $1.56 million and the physician CEO and laboratory director individually were required to pay $443,000 related to violations of Stark and the False Claims Act. The physician who filed the Qui Tam is expected to receive a $340,510 settlement.

This case should serve as a warning to those practices who may be lax about the legality of the compensation methodology being used, or unaware that Stark has implicated by the addition of DHS to the practice. Be sure that your practice is compliance by seeking advice of legal counsel.

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