

Internal Medicine Coding Alert

Compliance: Know Stark Law to Avoid Practice Problems

Receiving kickbacks can get you kicked out of practice.

When your physician makes referrals for just about service — lab services, imaging services, physical therapy, or other designated health services — he could be putting your practice at risk if he's not following Stark Law regulations.

Make certain you know the rules and exceptions to this law prohibiting certain physician self-referrals before you end up on the wrong side of the law.

Check Out These Stark Basics

At its most basic, the Stark Law is a federal law that prohibits physicians from referring Medicare patients to an entity that provides designated health services if the physician or an immediate family member has a financial relationship with that entity — unless an exception applies.

Section 1877 of the Social Security Act, also known as the physician self-referral law and commonly referred to as the "Stark Law," specifies that it:

1. Prohibits a physician from making referrals for certain designated health services (DHS) payable by Medicare to an entity with which he or she (or an immediate family member) has a financial relationship unless an exception applies.

"Financial relationships can include ownership interest, investments as well as other compensation arrangement," says **Katherine Becker, JD, LLM, CHC, CHPC, CPC**, associate consultant at Acevedo Consulting, Inc. in Delray Beach, FL "There are many ways in which the physician can achieve a financial benefit, whether it is through direct payment or an indirect benefit from the entity providing the designated health service."

2. 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.

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

"Stark Law is a 'conflict of interest' statute," says **Mary I. Falbo, MBA, CPC**, CEO of Millennium Healthcare Consulting, Inc. in Lansdale, Pa. "Stark Law is based almost entirely upon the AMA Code of Medical Ethics Opinion on 'Conflicts of Interest,' which is now Opinion 8.0321 — Physicians' Self-Referral."

Understand What Can be Considered as DHS

There are a myriad of services that are classified as DHS. A DHS can be anything from rehabilitation therapy services to imaging services or durable medical equipment. According to CMS, the following are all 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.

Determine How to Measure Stark Law Violations

"A Stark Law violation then, must necessarily involve a medical referral of a patient between a physician and at least one other 'outside' entity, such as a physician and a hospital, or two physicians not in the same group practice, where a prohibited financial, or compensation arrangement exists between them," Falbo says.

Here are some examples that Becker provides of arrangements that were found to violate the Stark Law:

- Hospitals renting space to physicians below fair market value based on patient referrals to the hospital.
- Hospitals paying physicians more than fair market value for their services based on referring patients to the hospital.
- Imaging centers paying physicians a percentage of the money received for providing the referred designated health services.

Whenever your clinician makes a referral for a DHS, you will need to double check to ascertain if your clinician has performed the referral in the right manner and is not in violation of the Stark Law. When your clinician makes a referral for a DHS, you should know whether or not your clinician or any of his immediate family members have any financial relationship with the entity that is providing the DHS. If the answer to this question is 'yes,' then you should see if your clinician's referral is in violation of the Stark Law or fits into a Stark Law exception.

Know Stark Law Exceptions

"The Stark Law and its exceptions are highly complex," Becker says. "There are exceptions to the financial relationships under the Stark Law such as for rental of office space, bona fide employment relationships, and personal service arrangements. There are very specific requirements that must be met in order to fall into the exceptions that can include the agreements being in writing, the duration of the agreement as well as whether the terms are consistent with fair market value."

When your clinician makes a referral for a DHS, you should determine if the referral complies with your practice's compliance plan as it relates to the Stark Law. If your clinician or any immediate family member does have a financial relationship with an entity that is providing DHS, then, as part of your plan, you should check if the arrangement fits into one of the Stark Law exceptions. If it fits, then you can refer Medicare patients to that entity for DHS with confidence; otherwise, you are risking violation of the Stark Law.

Heads up: If you are not sure if your referral is within the parameters of the Stark Law, seek legal help to avoid trouble later. "Physicians entering financial relationships should seek the advice of their health care attorney to make sure that their agreements are in compliance with Stark as well as other federal regulations, such as the Anti-Kickback Statute," Becker adds. "Physicians who violate the Stark Law can receive fines as well as be excluded from participation in federal health care programs."

Resources: For more information, check these links at <https://www.cms.gov/Medicare/Fraud-and-Abuse/PhysicianSelfReferral/index.html?redirect=/Physicianselfreferral/> and <http://journalofethics.ama-assn.org/2015/08/coet1-1508.html>.