

## Part B Insider (Multispecialty) Coding Alert

### Stark Law Update: Know What's on the Table with Stark

#### Get the facts on what 'commercially reasonable' means.

If you've been waiting anxiously for the results of the Stark Request for Information (RFI) and how it will impact your Part B practice, the wait is over. In a new proposed rule, Medicare finally gives the law a "Patients Over Paperwork" makeover, offering physicians some long-awaited relief.

**Background:** The Physician Self-Referral Law, more commonly referred to as the Stark Law, is a federal law that prohibits physicians from referring Medicare patients to an entity that provides designated health services (DHS) if the physician or an immediate family member has a financial relationship with that entity - unless an exception applies.

"Financial relationships can include ownership interest [and] investments as well as other compensation arrangements," says **Katherine Becker, JD, LLM, CHC, CHPC, CPC**, associate consultant at Acevedo Consulting, Inc. in Delray Beach, Florida. "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."

#### Feds Suggest Stark Needs a Revamp

Since its enactment in 1989, the Stark Law has not been significantly revised or updated, according to the Centers for Medicare & Medicaid Services (CMS). But, that's about to change. The CMS proposed rule, "Modernizing and Clarifying the Physician Self-Referral Regulations," published in the Federal Register on Oct. 17, aims to reduce physicians' administrative burdens and restructure policies with the healthcare industry's shift to value-based care. The move toward "modernizing" Stark comes after CMS received significant stakeholder feedback from a June 2018 RFI.

"In our listening sessions, Stark consistently ranked among the top concerns of providers and clinicians," said **Seema Verma**, CMS administrator, in a release. "Our proposed rule responds to these concerns. It eases the regulatory burden on value-based arrangements and provides badly needed new guidance to help providers minimize compliance burden under the Stark Law."

#### Here Are the Biggest Takeaways

The Stark proposed rule aims to remove value-based care hurdles and improve communication and coordination between providers and their associates to ensure patients are getting the care they deserve.

Review five important CMS-proposed policy changes:

- 1. Exceptions:** The agency wants to offer "new, permanent exceptions" under Stark "for value-based arrangements," says the fact sheet on the rule. As an added bonus, this would apply to both Medicare and non-Medicare patients.
- 2. Cost:** In an effort to lower costs and give patients more options, the rule asks for more feedback on how to adapt Stark to show greater price transparency. "Cost-of-care" and informing patients "at the point of referral" about the numbers are the hot topics for discussion, the fact sheet suggests.
- 3. Terminology:** CMS proposes two alternative definitions for the term "commercially reasonable" in regard to arrangements and whether these professional relationships make "commercial sense," the rule indicates. Interpretation is on the line here, so stakeholders are asked again to add their two cents.
- 4. Health IT:** The rule takes into account 21st Century Cures Act updates with revisions pertaining to EHRs, interoperability, software donations, and cybersecurity in Stark.

**5. Compensation:** In the proposal, CMS offers several compensation-specific suggestions. According to the rule, top payment-related proposals include: determining the "fair market value" of compensation from one provider to another; seeing how fixed compensation will factor into the "volume and value of referrals" in Stark; and deciding physicians' "meaningful downside risks" in value-based arrangements.

### **Industry Orgs Weigh in on Stark Proposals**

Two of the largest industry organizations, the American Medical Association (AMA) and the American Hospital Association (AHA), as well as other healthcare organizations concur that Stark needs a facelift. Both the AMA and AHA cite the importance of care coordination between providers and note the suggested changes will make it easier for patients down the road.

It is unfair to put the onus of follow-up and referrals on patients when providers are better suited to advise on this, especially after an illness or treatment, suggests **Patrice M. Harris, MD, MA**, AMA president, in a release. The AMA supports an "anti-kickback safe harbor and Stark exception to facilitate coordinated care" and will work with the feds to "update and modernize the fraud and abuse laws and regulations to address changes in the health care delivery and payment systems," she adds.

The AHA wholeheartedly agrees. "When health care providers are able to work together to coordinate care, it is patients that benefit the most," says **Rick Pollack**, AHA president and CEO, in a statement. "For far too long, a group of out-of-date regulations has created unnecessary roadblocks to the kind of collaboration and coordination that enables caregivers to meet all of their patients' health care needs, whether in the hospital, the doctor's office or their own homes."

To ensure your voice is heard, submit your comments to CMS by Dec. 31.

Read the Stark proposed rule at [www.federalregister.gov/documents/2019/10/17/2019-22028/medicare-program-modernizing-and-clarifying-the-physician-self-referral-regulations](http://www.federalregister.gov/documents/2019/10/17/2019-22028/medicare-program-modernizing-and-clarifying-the-physician-self-referral-regulations).