Eli's Rehab Report

Compliance: Sharpen Your Stark Law Knowledge, Part 1

Navigate part III of the Stark saga with these expert tips

If anything in the healthcare industry keeps rehab providers and their referring physicians on their toes, it's the Stark Law. This group of strict regulations that prohibit physician self-referrals just saw its third major set of revision and interpretation go into effect Dec. 4, 2007, and even then, not all the loose ends have been tied up.

For those that need a refresher: For Medicare cases (and potentially other payers on the state level), Stark prohibits physicians from making a referral to a "designated health service" in which the physician or a direct family member of the physician has a financial relationship -- unless the DHS falls under one of Stark's many exceptions. A DHS can be anything from rehabilitation therapy services to imaging services or DME.

So there's already a lot of information to take in. But to keep you up-to-date, Eli has drummed up key points from Stark III that have the potential to affect your rehab provider-physician relationship.

You're on Your Own With FMV

One thing that hasn't changed is that "fair market value" and Stark still go together like bread and butter. For example, providers in lease situations that involve Stark implications must ensure that the lease payments are of fair market value.

To help providers determine fair market value, Stark II added a safe harbor that set a standard for fair market value based on a set of surveys, said **Wayne J. Miller, Esq.,** with Compliance Law Group in Los Angeles, in an Eli-sponsored audioconference titled "The Latest Stark Law Essentials From the Expert: Nail 'Phase 3' of the Final Rules." But Stark III nixed the requirement that you must meet the median of these particular surveys to prove fair market value.

The good news is that you don't have to worry about comparing yourself to these set surveys anymore -- especially if the surveys weren't very applicable to your settings. "But the bad news is that this takes away from providers an industry-wide basis to know that they valued something correctly," Miller said.

Recommendation: Start hunting down independent salary surveys to check yourself or get an appraisal or valuation by a third party -- and make sure you have proof that you did so, Miller said. That way your back is covered in case you're ever suspected of a fair market value violation.

'Stand in the Shoes' Will Keep You on Your Toes

If you thought you were safe being one-step away from a Stark-sticky situation, think again. Stark III declared a new "stand in the shoes" concept, which forces physicians in groups to be accountable for their group's financial arrangements.

How it works: "CMS has now collapsed the doctor and his group into one layer" as far as business arrangements go, says **Linda Baumann, Esq. JD,** with Arent Fox in Washington, D.C. "So, for example, if a physician in a group practice contracts with a hospital and it implicates Stark, he now has to meet a direct compensation arrangement exception."

Before, the physician would likely have been safe under the indirect compensation arrangement analysis, i.e., she was safe as long as she wasn't getting paid based on the volume or value of her referrals.

New Incident-to Definition Opens Doors

So the loud and clear Stark concept for physicians and therapists is that physicians should not be paid based on the volume or value of their referrals. But one of CMS' recent interpretations in Stark III almost appears to speak the contrary.

CMS now says that physicians can receive credit in their bonus compensation for referrals within their group -- to the extent that the therapy services are billed incident-to and there is not a separate benefit paid, Miller said. So incident-to physical therapy services, for example, fits neatly into this interpretation.

"How you give credit is something you should look at separately, but the idea is that the doctor is technically involved in incident-to services," Miller said.

Don't miss: Such "incident-to" physician compensation can only be in the form of a productivity bonus -- not profit sharing, Baumann says.

Keep Your Eyes Peeled for More

If one of the points above has left you scratching your head over whether you're in compliance, be sure to consult a healthcare attorney who specializes in Stark law. There are a lot of hairy details that cannot be covered in just one article.

Plus, the 2008 Medicare Physician Fee Schedule Final Rule tackled some additional Stark issues. Although this rule did not include much that affected rehab providers, it left a lot of comments and room for further interpretation, so be sure to watch the headlines for updates in 2008.

Resource: To view the official text of Stark III law released in September, see http://a257.g.akamaitech.net/7/257/2422/01jan20071800/edocket.access.gpo.gov/2007/pdf/07-4252.pdf. To purchase a CD of Miller's presentation, go to http://www.audioeducator.com/industry_conference.php?id=619.

Stay tuned for more on Stark changes in the next issue of Physical Medicine & Rehab Coding Alert.