

CMS Seeks to Modernize Stark Law in Light of Value-Based Approach

Last month the Centers for Medicare & Medicaid Services (CMS) Administrator Seema Verma appeared in a Town Hall webcast presented by the American Hospital Association (AHA) and centered around hospitals' and health systems' requests for regulatory relief. Among the subjects discussed: the proposed reform of the federal physician self-referral law (referred to as the Stark Law).

Verma stated that one of the CMS's goals for the near future is to align the Stark Law with Medicare's shift away from traditional fee-for-service payment models and toward value-based payments. She reported that when CMS asked for provider opinion regarding which regulations they find the most "burdensome," the Stark Law wound up at the top of the list. And she acknowledged that the Stark Law was "developed a long time ago" and that presently, "how we are operating is different, and we need to bring along some of those regulations and figure out what we can do."

CMS putting together inter-agency panel to address provider complaints

However, the CMS can't single-handedly modernize the Stark Law to mesh with contemporary payment models and ease providers' regulatory burdens. The CMS lacks the authority to unilaterally make those legislative revisions, which is why a committee is in the works that will join CMS in this task, and will also include the Department of Health and Human Services (HHS) Office of Inspector General (OIG), the HHS General Counsel, and the Department of Justice (DOJ). Furthermore, according to Verma, action on the part of the United States Congress might be necessary before Stark Law initiatives can be implemented.

Bills pending in House and Senate

Outside of the Town Hall webcast, Stark Law legislation is already in the works. For example, last November, "The Medicare Care Coordination Improvement Act of 2017" was introduced into the House of Representatives as well as the Senate. Although the measure is currently under consideration in both branches, should it be enacted, it would go a long way toward updating the Stark Law when it comes to Medicare's shift to a value-based payment system. The bill would allow the HHS to waive statutes related to fraud in the case of Medicare Shared Savings Program participants. Further, the right to waive the authority of those statutes would include designated alternative payment model (APM) entities.

Currently, the HHS exception standard is applied to financial relationships not posing a "risk of program or patient abuse." The bill proposes that the standard be revised to financial arrangements not posing a "significant risk of program or patient abuse, including those that would promote care coordination, quality improvement, or resource conservation by physician practices under [Medicare] part B." This could work to the benefit of those organizing the coordination of care. Additionally, the bill would restrict the HHS Secretary from establishing stipulations that could negatively impact participation in APMs or the coordination of care among providers.

"Medicare Part B Improvement Act" & "Stark Administrative Simplification Act"

Two other bills are also pending. Although these do not deal with the need to update the Stark Law to make it more amenable to Medicare's value-based payment mindset, they will change the physician self-referral law should they ultimately be enacted.



The “Medicare Part B Improvement Act of 2017” was voted through the House in July and is now under consideration in the Senate. The measure seeks to codify, in the Stark Law, regulatory changes that went into effect in early 2016 dealing with exceptions to compensation and the holdover provision addressing exceptions for personal services and office space leasing arrangements.

The “Stark Administrative Simplification Act of 2017” has been under consideration in the House since September. The measure suggests a new Stark self-referral disclosure protocol (SRDP) for the cases of “inadvertent technical non-compliance” (for instance, arrangements for compensation that otherwise do not violate the law, but are missing a signature through oversight and not deliberate non-compliance).

This article is provided for educational purposes only and is not offered as, and should not be relied on as, legal advice. Any individual or entity reading this information should consult an attorney for their particular situation. For more information/questions regarding any legal matters, please email info@nelsonhardiman.com or call 310.203.2800.