

WHA Position

The Physician Self-Referral Law, or Stark Law, is in need of modernization.

- The Stark Law was created at a time when Medicare only existed as a fee-for-service program.
- Wisconsin continues to deliver some of the highest quality health care in the country, but is paid lower than average Medicare rates.
- Stark Law reform is another way to promote Medicare incentivizing high-quality health care.

WHA Ask:

Please continue to support opportunities to modernize the Stark Law and promote rewarding Wisconsin's high-quality, high-value health care.

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October 2019

Continue to Modernize Stark Law

CMS Reforms will help, but more can be done

Highlights

- WHA appreciates continued support from the Wisconsin Congressional delegation on modernizing the Stark Law.
- WHA is continuing to review the recent proposal by CMS to address many of the issues that prevent more hospitals from participating in value-based payment arrangements.
- While the CMS reforms appear to be a step in the right direction, ultimately, statutory changes from Congress may be necessary.

Background on the Physician Self-Referral Law (Stark Law)

The Stark Law was named after Pete Stark, a former California Congressman who authored the Ethics in Patient Referral Act in 1989. Its original intent was to eliminate any financial motivation for physicians to refer patients for unnecessary testing or services that could drive up the cost of health care. Over the years, the U. S. Department of Health and Human Services (HHS) has added hundreds of pages of complex and confusing regulations related to the Stark Law. These regulations have become so burdensome for physicians, hospitals, and others that the Law's original author now supports repealing it.

WHA Greatly Appreciates Support from Wisconsin's Congressional Delegation

In April of 2019, Wisconsin's entire Congressional Delegation signed a letter to CMS expressing support for the work CMS has been doing in their Regulatory Sprint to Coordinated Care. The letter encouraged CMS to explore removing burdensome regulations that are barriers to delivering high-quality, high-value health care. WHA appreciates Congressional support that has pushed CMS and led them to introduce a new proposed rule that takes a number of positive steps.

CMS's Proposed Regulation Appears to Take Steps in the Right Direction

WHA has previously recommended that CMS should focus on the following main areas under Stark Law:

1. Clarifying confusing definitions.
2. Providing clearer exceptions from the law.
3. Prioritizing intentional, rather than unintentional violations.
4. Harmonizing the Stark Law with the Antikickback Statute.

CMS's proposed rule appears to partially address a number of these recommendations:

- It proposes amending current definitions of "fair market value" and "commercial reasonableness," two terms that have previously created confusion.
- It creates new exceptions for value-based payment arrangements that either require participants to take on a degree of financial risk or advance "value-based" purposes.
- It proposes ways to harmonize the Stark Law and Antikickback statute, which currently overlap in potentially contradictory or duplicative ways.

One area the rule does not appear to address is providing relief from unintentional violations. Currently, the Stark Law is a strict liability statute, meaning that even unintentional violations can result in payment penalties and recoupments of millions of dollars. This very high risk to providers can be a huge barrier to even exploring value-based payment arrangements that could improve quality and reduce costs.

Additionally, it is unclear how helpful the proposed rule will be for smaller, rural hospitals. ***WHA is continuing to review the proposed rule and appreciates any assistance the Wisconsin Congressional Delegation can provide to promote Stark Law relief.***