STARK LAW

Open Forum
3rd Annual Healthcare Enforcement Compliance Institute
October 29 – November 1, 2017

Robert A. Wade
Partner
Barnes & Thornburg LLP
700 1st Source Bank Center
100 North Michigan
South Bend, Indiana 46601
Telephone: 574.237.1107
Email: bob.wade@btlaw.com

Lester J. Perling, P.A.
Partner
Broad and Cassel LLP
100 S.E. 3rd Avenue
Fort Lauderdale, FL 33394
Telephone: 954.764.7060
Email: lperling@broadandcassel.com

Kevin McAnaney, Esq.
Law Offices of Kevin G. McAnaney
250 Riverside Dr., Apt 71
New York, NY 10025
Telephone: 240-620-5449
Email: kevin@mcananeylaw.com

Learning Objectives

• Recognize when the Stark Act is implicated
• Comply with the components for exceptions for a physician practice
Stark Act § 42 U.S.C. 1395nn

- The Stark II Act prohibits a physician from making a **Referral**
  - to an **Entity**
  - for the furnishing of a **Designated Health Service**
  - for which payment may be made under Medicare
  - if the physician (or an immediate family member)
  - has a **Financial Relationship** with the entity

Stark II Act

Proof of Intent is **Not Required**
Penalty

Denial of payment or refund; civil money penalties (up to $100,000) and exclusions from federal and state programs for improper claims or schemes

Examples

Simple Example:

Dr. X Practice  Referral  Lab Owned by Dr. X
Examples

Simple Example:

Dr. X Practice ——— Referral ——— Lab Owned by Dr. X

How Stark II has been applied:

Dr. X Practice ——— Medical Directorship Payments ——— Hospital V

In both examples, the referrals violate Stark unless an exception applies

What is a Referral?

A referral includes:

- Request for an item or a service by a physician
- Request by physician for consultation with another physician, and any tests or procedures the other physician orders, performs or supervises
- Request for or of plan of care that includes provision of designated health services
What is a Referral?

• *A referral* is not a DHS personally performed by a physician

• A referral does not include a request by:
  
   Pathologists for clinical diagnostic laboratory tests and pathological examination services
   Radiologists for diagnostic radiology services
   Radiation Oncologists for Radiation Therapy

• If the request for such additional services results from a consultation initiated by another physician

Designated Health Services

• *Designated Health Services* include:

   Clinical laboratory services;
   Physical therapy and occupational therapy services;
   Radiology or other diagnostic services (including MRI, CAT scans);
   Radiation therapy services;
   Durable medical equipment;
   Parental and enteral nutrients, equipment and supplies;
   Prosthetics, orthotics and prosthetic devices;
   Home health services;
   Outpatient prescription drugs; and
   Inpatient and outpatient hospital services (encompassing almost every type of medical procedure).

*Note*: Ambulatory Surgery Centers services are not DHS!
What is a DHS Entity?

- Entity that bills for DHS service
- Entity that performs DHS service
  - “Perform” is given common meaning

What Is a Financial Relationship?

A Financial Relationship includes:

- Ownership interests
  - Through equity, debt, compensation or other means; and
- Compensation arrangements
  - Includes virtually any form of direct or indirect remuneration (i.e., personal service contracts, medical directorships, lease agreements, consulting arrangements, medical service provider arrangements)
Remuneration is defined (42 CFR § 411.351) as “any payment or other benefit made directly or indirectly, overtly or covertly, in cash or in kind …”
Nature of Exceptions

If Financial Relationship exists with an Entity, and patients are being Referred for Designated Health Service, then activity must either comply with an exception or the activity is illegal.