

THE STARK LAW – MEDICAL REFERRALS

By Ruth Levor

The Stark law, 42 U.S.C. § 1395nn (2011), prohibits physicians from referring their Medicare patients to obtain “designated health services” from entities in which the physician or a member of the physician’s family has a financial interest.

Regulations governing Financial Relationships Between Physicians and Entities Furnishing Designated Health Services are found at 42 C.F.R. §§ 411.350-411.389.

Treatises

A GUIDE TO COMPLYING WITH STARK PHYSICIAN SELF-REFERRAL RULES (Robert A. Wade, contributing ed., AIS 2004-).

Looseleaf; enumerates designated health services, explains the exceptions to the self-referral prohibition, clarifies compliance, physician-hospital relations, group practice issues and compensation issues.

CHARLES B. OPPENHEIM, STARK FINAL REGULATIONS: A COMPREHENSIVE ANALYSIS OF KEY ISSUES AND PRACTICAL GUIDE (4th ed. 2013).

Published by the American Health Lawyers Assn. and available from LexisNexis, this publication is updated by supplementation.

SONNENSCHN NATH & ROSENTHAL, THE STARK LAW: A USER’S GUIDE TO ACHIEVING COMPLIANCE (2d ed. 2009).

Book and CD; narrow distribution to law firms, Boston University law library, Texas Tech Health Sciences Center, the National Library of Medicine and the Library of Congress.

Congressional Materials

JENNIFER O’SULLIVAN, CONG. RESEARCH SERV., RL 32494, MEDICARE: PHYSICIAN SELF-REFERRAL (“STARK I AND STARK II”) (2007).

Reviews the legislative history of the act, associated regulations, other fraud provisions in the act and pending legislative changes that could alter the effect of the act; summarizes the act’s provisions.

JENNIFER STAMAN, CONG. RESEARCH SERV. RS 22743, HEALTH CARE FRAUD AND ABUSE LAWS AFFECTING MEDICARE AND MEDICAID: AN OVERVIEW (2010).

Covers the Anti-Kickback Statute, the Stark Law and the False Claims Act; includes amendments to the Stark Law exceptions under the Patient Protection and Affordable Care Act.

Websites



American Health Lawyers Association

<http://www.healthlawyers.org>

Educational organization that provides health law information for attorney specialists as well as *pro bono* materials for the public at large. A search for “Stark law” yields thousands of articles, updates, news reports and commentary, with links to detailed categories such as Fraud and Abuse, Medicare and Practice Groups. On the Public Interest page, [Practical Tips on the Stark Self-Referral Disclosure Protocol](#) may be downloaded as a PDF. There is a bookstore page at <http://www.lexisnexis.com/ahla/>, which lists among other related items, CHARLES B. OPPENHEIMER, STARK FINAL REGULATIONS: A COMPREHENSIVE ANALYSIS OF KEY ISSUES AND PRACTICAL GUIDE (4th ed.2013).



Health & Human Services Centers for Medicare & Medicaid Services Physician Self Referral page

<http://www.cms.gov> > Medicare Tab > Scroll down to **Fraud and Abuse** > Click on Physician Self Referral

This database includes the center’s advisory opinions on whether physicians’ referrals are prohibited. It also provides the list of codes of Designated Health Services, the self-referral disclosure protocol and a list of settlements in cases of voluntary self-disclosures.

Electronic Resources

SCOTT BECKER & MICHAEL G. MACDONALD, *The Medicare-Medicaid Fraud and Abuse Statute, the Stark Act and the False Claims Act in HEALTH CARE LAW: A PRACTICAL GUIDE* ch. 5 (2d ed. 2002-), available at LEXIS HLTHPG.

The first edition is a looseleaf still held by various libraries, whereas the 2nd edition is shown on OCLC to be available in print only at the U.S. Supreme Court and Brooklyn Law School.

W. BRADLEY TULLY, DAVID P. HENNINGER, & ALAN H. RUMPH, FEDERAL SELF- REFERRAL LAW (BNA's Health L. & Bus. Series No. 2400), available at Bloomberg BNA Health Law Resource Center and at WL BNAHLB-FSR.

“Analyzes the definitions, exceptions, and limits on applicability that complicate the statute's prohibition, emphasizing both formal and informal regulatory interpretations, as well as the statutory language.” This database includes many source documents pertaining to legislative amendments and proposed rulemaking and an extensive bibliography.

Articles

Rebecca Bethard, *Physician Self-Referral: Beyond Stark II*, 43 BRANDEIS L.J. 465 (2004-05).

This student note includes a summary and table of state physician self-referral laws.

Elise Dunitz Brennan & Hilary L. Velandia, *Do the PPACA Amendments to the Stark Whole Hospital Exception Mean the Evolution of a Two-Tier System?*, 4 J. HEALTH & LIFE SCI. L. 40 (2010).

Examines the impact of recent health care reform legislation on physician-owned hospitals.

Adrienne Dresevic & Andrew B. Wachler, *Stark II Phase III—The Full Picture: Highlights of the Phase III Final Rule, Potential Future Changes, and the Overall Regulatory Scheme*, 20 HEALTH LAW. 51 (2007).

Addressed to practitioners, this article “addresses the highlights of Phase III of the final rulemaking, identifies other proposals that may impact the Stark regulations in the future, and provides a comprehensive summary of the overall Stark regulatory scheme as finalized by the Phase III final rule.”

Adrienne Dresevic & Andrew B. Wachler, *CMS Finalizes Major Stark Changes - New Physician-Self Referral Rules in the 2009 IPPS Final Rulemaking Will Require Restructuring of Many Common Healthcare Arrangements*, 21 HEALTH LAW. 1 (2008).

An update to the article cited immediately above.

Jennifer A. Hanson, *The Academic Medical Center Exception to the Stark Law: Compliance by Teaching Hospitals*, 61 ALA. L. REV. 373 (2009-10).

Student note discussing the only case to have addressed the exception to the Stark law for academic medical centers.

Richard P. Kusserow & Harvey A. Yampolsky, *The Stark Law: Using Its History to Craft Its Future*, J. HEALTH CARE COMPLIANCE, Nov.-Dec. 2005, at 5.

A former Inspector General and a former general counsel of Health and Human Services maintain that the law achieves a successful balance between physician management of and patient access to health care.

Robert C. Lower & Robert D. Stone, *Off with Their Heads! Summary Execution for Technical Stark Violations—and a Proposal to Commute the Sentence*, 3 J. HEALTH & LIFE SCI. L. 112 (2010) (went to press just as President Obama signed the Patient Protection & Affordable Care Act of 2010).

“The article proposes a new regulatory exception--the Technical Deficiency Exception--which would allow parties to cure technical violations without involvement of government officials.”

Paula Tironi, *The “Stark” Reality: Is the Federal Physician Self-Referral Law Bad for the Health Care Industry?*, 19 ANNALS HEALTH L. 235 (2009-10).

This is the 25th anniversary special edition of this journal published by the Loyola University Chicago Law School’s Beazley Institute for Health Law and the National Health Lawyers Association. Along with another article focusing on Stark, Irvin “Ham” Wagner, *The Difficulty of Doing Business With Stark in an Ever-Changing and Overly Complex Regulatory: After Twenty Years, Where Are We Heading?*, 19 ANNALS HEALTH L. 241 (2009-10), it discusses the effectiveness of self-referral regulation.

Susan O. Scheutzow & Steven A. Eisenberg, *The Employee Exceptions to the Anti-Kickback and Stark Laws After Tuomey: What’s a Physician’s Employer To Do?*, 4 J. HEALTH & LIFE SCI. L. 146 (2011).

Discusses the exceptions to banned self-referrals in the case of certain bona fide employees and uncertainties concerning these payments raised by recent case law.

Patrick A. Sutton, *The Stark Law in Retrospect*, 20 ANNALS HEALTH L. 15 (2011).

Questions whether the Stark law has made things better or worse and offers proposals to control self-referral abuse while simplifying the law and its regulations.

Jean Wright Veilleux, *Catching Flies with Vinegar: A Critique of the Centers for Medicare and Medicaid Self-Disclosure Program*, 22 HEALTH MATRIX 169 (2012).

Proposes reforms to enforcement of the Stark law and a demonstration program to test the proposed reforms.

Steven D. Wales, *The Stark Law: Boon or Boondoggle? An Analysis of the Prohibition on Physician Self-Referrals*, 27 LAW & PSYCHOL. REV. 1 (2003).

Discusses how the law's complexity and lack of clear guidance make compliance and enforcement difficult and looks at the effects of voluntary compliance and the domination of capitation payment systems.