

Will Congress Repeal the Stark Law?

Imagine a world where there were no physician self-referral laws. Would physicians change their current ownership and compensation arrangements? Would fraud and abuse in healthcare rise? Would administrative burdens and costs decrease, allowing for an increase in compensation and decrease in healthcare costs? In recent hearings conducted by the Senate Finance Committee, physicians and other industry stakeholders sought not just to revamp the Stark Law, but to fully repeal it.

The Stark Law prohibits physician referrals of designated health services for Medicare and Medicaid patients if the physician (or an immediate family member) has a financial relationship with the recipient of the referral. The Federal Self-Referral prohibition is named after former Congressman Fortney Hillman “Pete” Stark, Jr., who championed the law in 1989. The original intent of the law aimed to prohibit potential conflicts of interests when physicians referred patients for clinical laboratory services under Medicare. Pete Stark sought to prevent physicians from increasing costs to healthcare by sending patients for unnecessary testing, which was allegedly motivated by financial benefit and not patient care needs.

Ironically, the father of the Stark Law is now joining its opponents and advocating for putting the Stark Law out to pasture. Pete Stark recently called for repealing the confusing and burdensome version of the law that exists today and replacing it with a simpler version.

According to opponents of the Stark Law, it has since mutated into a “minefield for the healthcare industry.” A total repeal or a major overhaul would arguably help practices focus on patient care and aid in the transformation from fee-for-service payments to a value-based care system. According to Peter Mancino, deputy general counsel of The Johns Hopkins Health System Corporation, the current version of the law presents obstacles for physicians to enter into innovative payment arrangements, while complying with fair market value compensation requirements. Opponents also claim that the Stark Law is unnecessary, pointing to the Federal Anti-Kickback Statute as a mechanism for the federal government to ensure that referrals are not affected by financial conflicts of interest.

Senate Finance Committee Chairman Orrin Hatch seemed to agree with some of the points raised by the Stark Law’s opponents. Hatch acknowledged the need to amend the Stark Law to the extent it is impeding with recently passed federal healthcare reform programs.

As the healthcare industry continues to shift towards value based compensation models, the need for amending (if not repealing) the Stark Law will become imminent. However, physicians who are not in favor of value based compensation may be skeptical to support a reform of the Stark Law that would only limit their prospects for financial compensation. It is worth noting that many of the opponents who testified before the Senate Finance Committee represented interests of larger hospital systems.

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