



Federal Stark Law Strictly Limits Kickbacks on Health Services

Doctors of chiropractic engage in a host of business relationships in the conduct of their practices. We all look for value, cost effectiveness and opportunities to save money and, profit where we can from our business transactions. There are, however, strict legal barriers that every DC must be aware of to avoid potentially serious consequences as we contract for services and build business relationships. At the top of the list of rules governing business relationships for health professionals is the so-called "Stark Law".

The federal anti-kickback statute known as the Stark law (after the bill's author, California Congressman Fortney Stark) is a broadly worded statute that makes it a crime to pay or receive remuneration of any kind for referrals or services "compensable" under any federal or state health care program. More specifically, the anti-kickback statute makes it a felony, punishable by up to five years in prison and a \$25,000 fine, to "knowingly and willfully" solicit, receive, offer or pay any remuneration in return for (1) referring or arranging for services payable by any federal or state health care program, or (2) purchasing, leasing, ordering or arranging for any goods, facilities or services which may be paid for in whole or in part by any federal or state health care program.

Another sanction available under the statute is exclusion of any person or entity from participation in the Medicare program. Additionally, the Balanced Budget Act of 1997 added civil mon-

etary penalties for violations of the Anti-kickback statute in amounts up to \$50,000 per violation and assessments equal to not more than three times the amount of remuneration paid under the arrangement. The details of this law are available online in the United States Code of laws, under Section 42 U.S.C. 1320a-7a(7)) at: <http://www.access.gpo.gov/uscode/uscmain.html> (Go to Title 42, Chapter 7, Sub-Chapter XI, Section A).

The Stark law was initially passed by Congress in 1989 to outlaw kickbacks from laboratories to doctors who referred business to them. That law was expanded in 1995 by what is commonly referred to as "Stark II" to include the following services:

- radiology and other imaging services (including MRI, CT and ultrasound)
- physical therapy
- occupational therapy
- radiation therapy
- durable medical equipment
- parenteral and enteral nutrients, equipment and supplies
- prosthetics, orthotics and prosthetic devices and supplies
- home health services
- outpatient prescription drugs
- inpatient and outpatient hospital services

The Stark Law defines this list of services, together with clinical labora-

tory services as "**Designated Health Services (DHS).**"

The Medicare Anti-kickback statute is the mother of all anti-kickback/anti-rebate statutes. To restate the basic prohibition of the statute: **If a payment of any kind, direct or indirect, is made where at least one purpose of the payment is to influence referrals, purchasing, leasing, or to furnish anything that can be paid for by Medicare or Medicaid, then both the person/entity paying and the person/entity receiving the payment can be charged with a felony or be subject to civil monetary penalties.**

(For example, if an imaging company offers to rent space in your office for their equipment, or pay you any amount per patient and you refer patients to them for any procedure, you are in violation of the law.) The most important built in safeguard in this statute, as far as providers are concerned, is that the payment or receipt of payment must be made "knowingly and willfully." How courts ultimately interpret this requirement will determine just how much protection it affords providers.

If you refer a patient for DHS or an entity in which you or a family member have a direct or indirect ownership or compensation arrangement, the law applies to you.

On January 4, 2001, the Health Care Financing Administration (HCFA) released Phase I of the long awaited final Stark II regulations. These regulations govern doctor referrals of Medicare or Medicaid beneficiaries to healthcare entities with which the referring pro-

vider (or an immediate family member) has a financial relationship.

The Stark Law basically contains two prohibitions: (i) a practitioner with a financial relationship with an entity which provides Designated Health Services may not make a referral to such entity for such services unless a specified exception applies; and (ii) the entity receiving the referral is prohibited from submitting a claim for such services under the Medicare or Medicaid program. A financial relationship is defined as either an ownership/investment interest, or a compensation arrangement.

Does this law apply to me?

If you refer a patient for designated health services (DHS) to an entity in which you or a family member has either a direct or indirect ownership interest or compensation arrangement, the law applies to you.

Once again, designated health services include clinical laboratory services; physical, occupational and speech-language pathology services; radiology and certain imaging services; radiation therapy services and supplies; DME and supplies; parenteral and enteral nutrients, equipment and supplies; prosthetics, orthotics, and prosthetic devices and supplies; home health services; outpatient prescription drugs; and inpatient and outpatient hospital services.

Even your practice is "an entity" for the purposes of Stark. Fortunately, a DHS personally provided or supervised by you in your own practice is not a referral under Stark. However, if you practice with other providers and refer patients to other doctors in the group, the referral may be prohibited unless the practice is a true "group practice" and the referral meets an exception.

The Stark law is a complicated body of rules and regulations, and if you have any sort of referral relationship that involves compensation of any sort to you or a member of your family, you will want to immediately review the details of that relationship to make sure that you are not in violation of this law. Doctors of chiropractic have gone to jail because of Stark law violations. There are situations involving diagnostic technology and compensation for the use of a DC's office space, and other questionable configurations that have gotten a few of your colleagues in very deep trouble.

Definitions

To understand the Stark Law, one must understand the basic definitional terms. There are many legal terms and definitions that were written by regulators and lawmakers to be as specific as possible, to provide for exact, if complicated terms under which the law will be enforced. The most critical terms are defined below.

• **Referral** — The term "referral" means (1) any request by a doctor/physician for an item or service, including the request by a doctor/physician for a consultation with another provider (and any test or procedure ordered by or performed by or under the supervision of the other doctor/physician), or (2) any request for or establishment of a plan of care that includes the provision of any DHS. A referral does not include any DHS personally performed by the doctor; however a DHS is not

Finally, The Patient Education Video That Says it All... Birth Trauma: A Modern Epidemic
The Cause of the First Subluxation

- Demonstrates the trauma of modern birthing procedures on the infant's spine.
- Shows adjusting in infancy and pregnancy.
- Impacts parents' understanding for the importance of lifetime chiropractic care.

Referenced, implementation booklet included.

Call (610) 891-1190 for a limited time offer of \$129

Produced by Jeanne Ohm, D.C.
 International Instructor on Pregnancy, Birth & Infancy.
 Founder of Makin' Miracles... Connecting Kids 'n Chiropractic.

www.makinmiracles.com

FREE Success Coaching Program Included!!!

Time...is Money!!! Increase Your Monthly Net-Profit by \$5,000!!!

With 5 simple, low-cost, yet highly accurate point-of-care CLIA waived urinalysis tests.

In less than 10 minutes, you can determine your patients':

- Bowel Toxicity
- Free Radical Damage
- Mineral Deficiencies
- Vitamin Deficiencies
- Adrenal Function

QuickSTAT
 The power to know...NOW!!!

800-890-4547
 480-890-2221

Call now and receive \$50 Off Entire Testing System!