



Stark 2008:  
What it means to you

# Disclaimers

- The law is what the judge and the jury say it is
- All aspects of the law are potentially subject to interpretation
- However, there are some “black and white” concepts

# Stark law

- Prohibits a physician from referring patients to an entity if the physician or a family member has a financial relationship with the entity
- Prohibits the submitting of a claim for reimbursement for such services

# Elements of False Claims Act

- The defendant presented a claim to the government seeking reimbursement for medical services or goods
- The claim was false, fictitious, or fraudulent
- The defendant had both knowledge of the claims falsity and an intent to submit the claim

# Anti-Kickback Statute

Government must show that:

- Knowingly and willfully
- Solicited or received remuneration
- In return for, or to induce, referral of program related business

# Purpose of Stark law

- Prevent over utilization of services by physicians who could profit by referring patients to facilities in which the physician has a financial interest

# Elements of Stark law violations

- A financial relationship between a health care entity and a physician exists
- A referral by the physician to the entity for the designated health services
- The submission of a claim for services
- The absence of an exception

# Stark law exceptions

- Services provided personally by another physician who is a member of the referring physician's group practice or under the supervision of such a physician
- In-Office Ancillary Services furnished by the referring physician, a physician who is a member of the same group, or an individual who is supervised by the referring physician or by a member of the group

# Stark law exceptions

- If services are in the same building in which the referring physician generally practices, and the receipt of DHS is not the primary reason the patient contacted the referring physician
- Services provided in a centralized building that is used exclusively by the referring physician's group practice

# Academic Medical Center Exception

- Referrals for DHS may be made by physicians with a financial relationship to an academic medical center if the referring physician:

# Academic Medical Center Exception

- Is a bona fide employee of the academic medical center
- Is licensed to practice medicine in the state
- Has a bona fide faculty appointment at the affiliated medical school
- Provides either substantial academic or clinical teaching services for which he or she receives compensation

# Academic Medical Center exception

- The compensation can not exceed the fair market value for services provided
- Total compensation paid to the referring physician is set in advance

# Academic Medical Center Exception

- Total compensation by AMC is not determined in a manner that takes into account the volume or value of any referrals or other business generated by the referring physician within the medical center

# Stark I

- Prohibited self-referrals of Medicare patients for clinical laboratory services
- Safe Harbor protections

# Stark II, designated health services

- Clinical laboratories
- Physical therapy
- Occupational therapy
- Radiology
- Durable medical equipment
- Parenteral and enteral nutrients
- Prosthetics

# Stark II

- Home health services
- Outpatient prescription drugs
- In patient and outpatient hospital services

# Stark II safe harbors include

- Physician services
- In-office ancillary services, pre-paid plans
- Hospital ownership
- Hospital compensation agreements
- Employment relationships
- Group practice arrangements
- Physician recruitment

# Stark law

- Phase I
- Phase II
- Phase III

# Phase III

- A group practice may pay a bonus to a member of the group based upon productivity of services personally performed or incident to such services,

HOWEVER

- The bonus can not be based upon volume or value of the physicians referrals

# Example

- If a vascular surgery group divides up the profit from the vascular lab, all members of the group may receive a bonus from the profit, but the amount of the bonus may not be based upon the number of studies referred to the lab.

# Phase III; exception categories

- In-office ancillary services
- Exceptions for publicly traded stocks
- Rental of office space and equipment
- Personal service relationships
- Bona fide employment relationships

# Examples of interpretation

1. Two vascular surgeons in same office
2. Buy a duplex machine together
3. Is a violation of Stark (receiving money based on referrals)
2. Is not at violation (distinct entities, same as if they were in separate offices)

# Examples of “no interpretation”

1. Receiving payment from a hospital based upon the number of CT scans ordered

# Penalties for violation of Stark law

- Nonpayment of claims filed for services provided in violation of the laws
- “any person who presents or causes to be presented a bill or claim that the person knows or should know” violates the Stark laws may face program exclusions and civil penalty of up to \$15,000 for each service provided improperly.

# Penalties for violation of Stark law

- Attempts to knowingly circumvent Stark law - \$100,000 fines for each incident and program exclusion
- Strict liability
  1. Proof of intent to defraud is unnecessary
  2. Proof of intent to harm patient is unnecessary

# United States ex. rel. Qunnelly vs. Piedmont Hospital

- Vascular technologist alleged Piedmont Hospital submitted claims for a physician's interpretation of some vascular laboratory tests when the physician interpretation had not been done.
- Claimed that physician never reviewed study just simply signed off on technician's interpretation

# United States ex. rel. Qunnelly vs. Piedmont Hospital

- Piedmont Hospital failed to execute contracts with physician's performing services at the vascular laboratory
- Piedmont denied wrong doing but settled for 3 million dollars
- Technologist received \$354,390 as her share of the recovery

# United States ex. rel. Qunnelly vs. Piedmont Hospital

“This settlement again demonstrates the United States’ commitment to protecting federal funds from fraud and abuse.”

“Ensuring the integrity of the Medicare program continues to be a priority of the federal government”

U.S. Attorney

# United States ex rel. Orbeck vs. Marion County Med. Ctr.

- Marion hired two physicians and paid them financial remuneration that far exceeded the fair market value of their services.
- Marion filed false claims as a result of services ordered by the paid physicians
- Hospital paid \$3,750,000
- Dr. Orbeck collected \$610,000 as his share

# Erlanger Medical Center

- Paid remuneration intended to induce physicians to refer patients to its facilities
- Established medical director contracts
- Recruiting agreements
- Joint ventures and leases
- Erlanger settled the case for \$40 million

# University Hospitals Health System of Cleveland

- Financial arrangements were made to motivate certain physicians to make referrals to certain Drs. within the system
- Dr. Kirby, former co-chairman of cardiothoracic surgery was excluded and filed suit
- Hospital paid \$14 million
- Dr. Kirby received \$1.5 million as his share

# United States, ex rel. Juan Villafane vs. Robert Solinger et al

- Faculty practice plan was receiving money from one of the hospitals where the faculty practiced.
- Alleged that since doctors salaries were being paid out of money given to plan by hospital, the more these defendants referred to the hospital, theoretically the greater their salaries

# Villafane vs. Solinger

- In addition, it was alleged that the only reason that the hospital contributed to the faculty plan was because the members of the faculty referred business to the hospital

If there is a question as to whether or not a relationship is governed by the Stark Law, obtain legal council.

“The fact that a lawyer advised such conduct, does not relieve it of its foolishness”

Lucilius A. Emery (1890)