

Blog Post

Possible Changes to Stark Law in 2019

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By Marcy Hahn-Saperstein

Last summer The Centers for Medicare and Medicaid Services (CMS) solicited input on potential amendments to the federal Physician Self-Referral Law (the Stark Law). CMS intends the amendments to eliminate obstacles to its stated goal of enhancing coordinated care and transitioning from volume-based to value-based payment systems. By the end of last summer, almost 400 stakeholders had provided feedback, including various physician and hospital associations. Many stakeholders advocated for new “value-based” exceptions to the Stark Law that would permit physicians to be compensated based on the “value or volume” of referred DHS but in the context of alternative payment models that would provide appropriate incentives that involve shared risks or shared savings. Many stakeholders urged CMS to revise the definition of commercial reasonableness to permit arrangements that are simply “useful” in the purchaser’s business and based on terms that are “typical” of such arrangements in order to allow for greater clinical integration. Some stakeholders advocated for the modification of the definition of fair market value so that physicians can be rewarded for value-based care without violating the “volume and value” provision of the Stark Law. Finally, stakeholders also urged CMS to clarify the “volume or value standard” itself with a variety of suggestions.

On March 4, 2019, at a Federation of American Hospitals conference, Seema Verma, the CMS

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Administrator, referenced many of the concerns raised by these stakeholders. At the conference, Verma highlighted the need to “clarify regulatory definitions of volume or value, commercial reasonableness and fair market value” and the need to address issues of technical noncompliance as well as updating the regulations that implement the Stark Law to address cybersecurity issues and electronic medical records.

In their efforts to develop value-based arrangements that would benefit patients while achieving Medicare program goals, physicians and hospitals alike have raised concerns that such arrangements could violate the current Stark Law and its regulations. Verma recognizes those concerns and anticipates that the coming changes “will represent the most significant changes to the Stark Law since its inception.” So keep an eye open for new exceptions and other modifications to the Stark Law this year.

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