

## **Bill To Scrap Stark Law In-Office Ancillary Services Exception Opposed**

A bill to restore the original intent of the Stark Law, which would dissolve the in-office ancillary services exception, making it illegal for physicians to refer Medicare patients for services in which there is a financial interest, has some in the medical community concerned about both the financial and patient impact. The Obama administration and Congress' Medicare payment commission also have pushed to narrow the exemption.

Congresswoman Jackie Speier (D-CA), along with Reps. Jim McDermott (D-WA) and Dina Titus (D-NV), introduced HR 2914, the "Promoting Integrity in Medicare Act of 2013" in the House August 1st. According to the sponsors, the bill would cut unnecessary Medicare spending by hundreds of millions annually without reducing the essential care that seniors rely on.

The current Stark Law bars physicians from referring Medicare patients for certain health care services in which they have a financial interest, but it includes an "in-office ancillary services exception." The legislation would restore the original intent of the self-referral law by prohibiting self-referral for four complex services-- radiation therapy, advanced imaging, anatomic pathology, and physical therapy.

Currently, to qualify as an in-office ancillary service, the health service must be provided by or supervised by the physician who ordered the service or another physician in the group practice. The service must also be billed by the group practice to ensure that the entity that provides the service is an integral part of the group practice. The law requires that the service be provided in the same building or in a location that serves as the central site for the designated health service.

The original intent of the law was to prohibit physicians from ordering items or services for Medicare beneficiaries if the entity that provided the item or service had a financial relationship with the physician. The in-office ancillary services provision was added in 1993 as part of amendments to the original Stark law that was passed in 1989.

Rep. McDermott says the use of in-office ancillary service exception has increased, resulting in increased costs to the Medicare program. Proponents of the bill say the exclusion has grown into a loophole beyond its original intent. The bill has the support of the Alliance for Integrity in Medicare, a coalition of medical societies aimed at ending the practice of inappropriate physician self-referral.

The bill follows three Government Accountability Office reports identifying costs associated with self-referral ancillary services. The GAO's latest self-referral investigation covered prostate cancer--related intensity-modulated radiation therapy services between 2006 and 2010 and found that when physicians provide

certain services in their own facilities instead of referring the service to an outside lab, the number of procedures increases, and costs went up.

The Medicare Payment Advisory Commission suggested a reform in 2010 that would reduce the number of physician offices covered by the Stark Law In-Office Exception, because many physicians have invested in ancillary equipment leading to increased utilization. In 2008 Medicare paid \$104 million to multi-specialty physician groups for radiation therapy alone, an 84 percent increase from 2003.

President Obama also proposed in the fiscal 2014 budget to exclude radiation therapy and advanced imaging from the in-office ancillary services exception of the Stark self-referral laws. The Office of Management and Budget concluded that closing the loophole for these services would provide a savings of \$6.1 billion over the standard 10-year budget window, providing further evidence that these self-referral arrangements lead to over utilization of Medicare services and should be addressed by Congress.

The movement to do away with the exception has culminated in the bill, and a source said that proponents of eliminating the bill first went to CMS to take administrative action to eliminate the exception without success, leading to more lobbying of Congress.

According to opponents of the legislation, if enacted, could have a dramatic impact on providers' businesses because they would have to unwind business arrangements and sell equipment.