



Alerts

Health Care Reform Increases Physician Transparency and Disclosure Requirements

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Hinshaw Health Law Alert

This is the seventh in a series of health care alerts that Hinshaw & Culbertson LLP will publish on the topic of health care reform.

The Patient Protection and Affordable Care Act (PPACA) places a number of transparency and disclosure obligations on physicians and hospitals. One such requirement was brought about by the amendment to the Ethics in Patient Referrals Act (commonly known as the federal Stark Law) that addresses the potential conflict of interest created when a physician refers a patient for radiology services to be performed at the physician's practice. Another requirement is the restriction on the availability of the whole-hospital exception to the Stark Law and the expansion of the disclosure requirements for physician-owned hospitals that are currently in operation.

In-Office Ancillary Services Exception

The Stark Law prohibits a physician from referring Medicare patients for certain designated health services to entities with which the physician or his or her immediate family member have a financial relationship, unless an exception applies. It also prohibits the physician or entity from billing for services provided pursuant to an improper referral. Physicians who furnish designated health services within their practices often rely on the Stark Law in-office ancillary services exception. Section 6003 of PPACA requires physicians referring patients for radiology services, including MRI, CT and PET scans, under the in-office ancillary services exception, to:

- inform patients in writing at the time of the referral of the availability of other suppliers who may provide the services; and
- furnish a written list of suppliers who provide the services within the area where the patient resides.

This requirement is currently in effect for MRI, CT and PET scans, and may be applied to additional designated health services by the United States Secretary of Health and Human Services. While it is unclear when this requirement will be enforced, physicians currently referring patients for MRI, CT and PET scans should prepare and distribute the notices required by Section 6003 to ensure compliance because the new law was effective March 23, 2010.

Whole-Hospital Exception

Section 6001 of PPACA places strict limitations on the availability of the whole-hospital exception to the Stark Law. While PPACA permits existing physician-owned hospitals to continue to qualify under the exception, those hospitals are prohibited from increasing the aggregate percentage of physician ownership in the hospital above the percentage in place as of March 23, 2010, the date that PPACA was enacted. PPACA contains a grandfathering provision that addresses hospitals that are currently under development by establishing a December 31, 2010, target date by which a hospital must have both physician ownership and a Medicare provider agreement in place in order to meet the requirements of the whole-hospital exception. Based upon the language of PPACA, it is unclear whether hospitals currently under development will be allowed to expand the level of physician ownership beyond those in place as of March 23, 2010. There has been considerable debate on this topic as some commenters believe that hospitals under development are allowed to increase the percentage of physician ownership in the hospital up until December 31, while others contend that any



hospital planning to qualify for the whole-hospital exception is strictly prohibited from increasing the percentage of physician ownership beyond the levels in place on March 23.

Furthermore, PPACA requires each physician-owned hospital to submit an annual report to the Secretary of Health and Human Services containing a detailed description of each physician owner or investor in the hospital and the nature and extent of each ownership and investment interest. This information will be made available to the general public on the CMS website. Each physician-owned hospital must also have procedures in place requiring both the hospital and the referring physician to disclose the physician ownership interest in the hospital.

For further information, please contact your regular [Hinshaw attorney](#).

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