

Stark & PORA Basics

July 23, 2021

By Michael H. Cohen

In today's video, we discuss the basics of federal Stark law, and the anti-kickback and fee-splitting prohibitions.

Hi, I'm Michael H. Cohen, founding attorney of the Cohen Healthcare Law Group. We help healthcare industry clients just like you navigate healthcare and FDA legal issues so you can launch, or continue to scale, your health and wellness product or service.

Ted is a medical doctor, he works in a hospital 3 days a week and the rest of his time he runs his specialized clinic. Let's say that Dr. Ted accepts Medicare patients (So he's bound to Medicare and Medicaid rules) and he participates in commercial insurance with several plans. Ted's partner in the clinic has his own medical corporation, and that medical corporation contracts as an independent contractor with Dr. Ted's medical corporation.

Their clinic also subcontracts a billing agency and pays the agency on a percentage of collections.

Dr. Ted has questions about referrals between his hospital practice and his private practice.

So he asks about Stark and anti-kickback law and here are some basics.

One: when does federal law apply, and what does Stark prohibit?

Two: when do state self-referral prohibitions apply, and what do they prohibit?

First, federal law applies whenever physicians accept Medicare or Medicaid patients. The federal self-referral law, known as Stark, prohibits medical doctors from referring Medicare or Medicaid patients to so-called designated health services, or DHS.

DHS include many of the ancillary services that family physicians provide, such as clinical laboratory services, outpatient prescription drug services and family and occupational therapy and imaging services (e.g., MRI, CT, ultrasound).

Stark has several exceptions. A big one is referral to the referring physician's "*group practice*." This includes referrals by the doctor to the doctor himself or herself, or someone in the physician's group practice, or someone supervised by a medical doctor in that practice.

Another common exception is known as in-office ancillary services, or IOAS. There's a long complicated definition which we cover more on our blog: www.cohenhealthcarelaw.com/blog.

Second, states have their own mirror-Stark laws, prohibiting what is known as self-referral. For example, California law contains prohibitions against self-referral in the Physician Ownership and Referral Act of 1993 (“PORA”), as well as California Labor Code Section 139.3, and some other statutes.

California has its own definition of DHS.

Third, it’s important to remember that where federal reimbursement monies are involved, federal anti-kickback law also can apply and it can apply to all practitioners, not just physicians.

Fourth, self-referral prohibitions apply whenever a “*referral*” is made. This doesn’t necessarily require a referral in the sense of a phone call or written document. Enforcement authorities can look to the overall business model and conclude that there is something fishy, there’s a disguised unlawful referral arrangement.

More typically, such a scenario would arise in a kickback situation rather than self-referral, which we’ll cover on a subsequent video.

If you or someone you know could benefit from a Legal Strategy Session with one member of our Legal Team, let us know.

Thanks for watching. Here’s to the success of your healthcare venture, we look forward to connecting with you soon.

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