

Understanding the Stark Law and the Rural Provider Exception for Physicians

BY R. RICHARD CIRILLI, JR. AND LANE W. STAINES
DBJ Contributing Writers

The Stark Law, also known as the physician self-referral law, prohibits a physician (or an immediate family member) who has a financial relationship with a healthcare entity from making patient referrals to the entity for the following designated health services (“DHS”) covered by Medicare: clinical laboratory services; physical therapy, occupational therapy and speech-language pathology services; radiology and other imaging services; radiation therapy services and supplies; durable medical equipment and supplies; prosthetics, orthotics and prosthetic devices and supplies; home health services; outpatient prescription drugs; inpatient and outpatient hospital services; and parenteral and enteral nutrients, associated equipment and supplies. A “financial relationship” is an ownership or investment interest in an entity or a compensation arrangement between a physician (or an immediate family member) and an entity.

The Stark Law was originally applicable to healthcare entities that provided clinical laboratory services reimbursable by Medicare but was extended in 1993 to cover physician self-referrals for DHS. Under Stark, entities providing DHS to patients as a result of prohibited referrals are forbidden from submitting claims for such services to the Medicare program (and in some instances, the Medicaid program) or from billing an individual or third-party payor for the DHS. However, since the enactment of Stark, a number of exceptions to the Law



Lane Staines

have been established, including the rural provider exception, in-office ancillary services exception, and the academic medical centers exception.

Particularly relevant to Mississippi Delta physicians is the rural provider exception. The rural provider exception establishes that an ownership or investment interest in an entity does not constitute a financial relationship where the entity is a “rural provider,” furnishing substantially all of the DHS it furnishes to residents of a rural area. In order to furnish “substantially all” of the DHS as a rural provider, a physician/entity must provide at least 75 percent of his or her total DHS to patients living in rural areas on an ongoing basis. “Rural areas” are



Richard Cirilli

those areas not designated as “urban areas,” or areas not within a Metropolitan Statistical Area (“MSA”), as defined by the Office of Management and Budget (“OMB”). Often, counties that are adjacent to cities or other counties with larger populations are found to have such ample economic and social resources as to be considered within an MSA. According to OMB Bulletin No. 09-01 issued on November 20, 2008, and the Mississippi Department of Health State Rural Health Plan, Mississippi’s only MSAs are Gulfport-Biloxi (Hancock, Harrison and Stone counties); Hattiesburg (Forrest, Lamar and Perry counties); Jackson (Hinds, Madison, Rankin, Copiah and Simpson counties); Memphis, TN-MS-AR (in part);

and Pascagoula (Jackson and George counties). Notably, the Memphis, TN-MS-AR MSA includes DeSoto County (a “central county” in this MSA), Marshall County, Tate County and Tunica County. Areas not within Mississippi’s MSAs would be considered rural areas for purposes of the rural provider exception. Thus, Delta physicians practicing in rural areas and providing at least 75 percent of their total DHS to patients living in rural areas should consider the rural provider exception in the operation of their medical clinics.

Changes to the Stark Law have been prevalent over the years as evidenced by CMS’s recent issuance of the 2009 Hospital Inpatient Prospective Payment System rule affecting space and equipment leases and “under arrangements.” Accordingly, it is important for physicians to stay informed of any regulations that may affect their operation under the rural provider exception. Further, satisfaction of the rural provider exception does not ensure compliance with the Anti-Kickback Law or IRS laws, and consultation with an attorney may be necessary prior to acting under the shield of this Stark exception. **DBJ**

(Richard Cirilli and Lane Staines are attorneys in the Jackson office of Brunini, Grantham, Grower & Hewes. Richard is a partner in the firm’s litigation department, and Lane is an associate in the regulatory department. Richard can be contacted by email at rcirilli@brunini.com, and Lane may be reached at lstaines@brunini.com)