



AMERICAN SOCIETY FOR GASTROINTESTINAL ENDOSCOPY

Support physicians as they transition to new value-based payment models by creating early opportunities for success and eliminating regulatory barriers that impede advancement toward new payment and delivery designs.

MODERNIZING STARK LAW

ISSUE OVERVIEW:

When Congress enacted the Medicare Access and CHIP Reauthorization Act, it replaced the SGR with a program promoting value-based care delivery. The Merit-Based Incentive Payment System (MIPS) and alternative payment models (APMs) utilize quality and resource metrics that emphasize care coordination by physician practices.

The Medicare statute includes physician self-referral prohibitions, commonly known as the “Stark law” that were enacted more than 20 years ago and pose barriers to the participation of physician group practices in APMs. The Stark law prohibits payment arrangements that take into account in any manner the volume or value of referrals or other business generated by the parties. These prohibitions stifle innovative care delivery because they inhibit practices from incentivizing their physicians to deliver care more effectively. Congress recognized this long ago when it allowed CMS to waive the self-referral and anti-kickback provisions for accountable care organizations (ACOs).

LEGISLATIVE ASK:

Support soon-to-be-introduced legislation titled “The Medicare Care Coordination Improvement Act of 2017” which would:

- Provide CMS the same authority to waive the Stark and Anti-kickback laws as was provided to ACOs in the Affordable Care Act;
- Remove the "value or volume" prohibition in the Stark law so practices can incentivize physicians to abide by best practices and succeed in new value-based APMs. This protection would apply to practices that are developing or operating an APM (including, Advanced APMs, APMs approved by the Physician Technical Advisory Committee, MIPS APMs and other APMs specified by the Secretary) and that are in writing and signed by parties to the arrangement (and recertified every six months), items and services must be subject to fair market value except that they may not take into account volume or value; and
- Create a more workable standard that only triggers penalties for knowing and willful violations of the law, which is the current standard for civil penalty provisions of the Anti-Kickback Statute. Violations of the Stark law with respect to physician ownership interests would continue to be considered problematic and potentially abusive on a strict liability basis. CMS has established waivers from the Stark law’s prohibitions for ACOs. Similar to ACOs and the Medicare Shared Savings Program, APMs often incentivize physicians with lower and more efficient/cost effective utilization of resources.