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Health Care Reform & Stark

Last week President Obama signed the Patient Protection and Affordable Health Care Act (H.R. 3590). Among other things, Section 6003 of H.R. 3590 amends the "in-office ancillary services" exception to the Stark Law (42 U.S.C. § 1395nn). The in-office ancillary services exception, an exception from Stark's general prohibition against a physician referring a patient to an entity in which he or she (or a member of his or her immediate family) has a financial interest, has been with us for years. Subject to certain constraints, the exception permits certain ancillary services personally furnished by the referring physician or other physicians in the referring physician's group practice to be billed to the Medicare or Medicaid programs.

HR3590 amends 42 U.S.C. § 1395nn(b)(2) adding a requirement that the referring physician inform the patient that he or she may obtain the services for which the individual is being referred from another supplier other than the referring physician or his or her group. Right now, the amendment only applies to certain radiological procedures as noted below. However, H.R. 3590 gives the Secretary of HHS the right to expand the patient information requirement to cover other designated health services. If the physician's practice does not offer these services, there is no requirement to provide this information. But if the referring physician's practice does offer the services, then information requirement must be satisfied. The term supplier, when referring to alternative providers, unless the context otherwise requires, means a physician or other practitioner, a facility, or other entity that furnishes items or services under the Social Security Act (42 U.S.C. § 1395x.)

So how might this apply to a physician's office? If a physician is referring a patient out for certain radiological procedures (see below) and the referring physician's office or group offers these services, the physician must provide the patient with a written list of all other suppliers who furnish such services in the area ".in which such individual resides." Note that the list must cover suppliers where the patient resides and not those in the referring physician's trade area. Each physician's office that falls under the purview of H.R. 3590 will need to spend time preparing a compendium of those other providers offering services in the area where the patient resides. This will not be easy.

Right now the new requirements apply only to "magnetic resonance imaging, computed tomography, and positron emission tomography". §§ 1395(b)(2), (h)(6)(D). As noted, H.R. 3590 gives the Secretary of HHS authority to expand the list of designated health services covered by the disclosure requirement. We think this is likely to happen. Also, the new requirement applies whether the referring physician has an ownership interest in the entity or has a compensation arrangement with the entity supplying the referred services.

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