



Client Alert

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Senate Finance Committee Targets Physician-Owned Imaging and Physical Therapy

Section 1877 of the Social Security Act (42 U.S.C. 1395nn), commonly known as the Stark Law, governs physician self-referral for Medicare and Medicaid beneficiaries and generally bans a physician from referring a patient to receive designated health services, such as imaging, clinical laboratory services, and physical therapy, among others, from an entity in which the physician (or the physician's immediate family member) has a financial interest, unless an exception applies. One such exception, the In-Office Ancillary Services (IOAS) exception, permits physicians and group practices to provide designated health services in the physician's own office or the group practice location, as long as certain requirements related to supervision, location, and billing are met. The exception permits physicians to self-refer ancillary services such as diagnostic imaging and physical therapy.

Due in part to the rapid increase in federal spending on ancillary services in recent years, Congress and other stakeholders, such as the Medicare Payment Advisory Commission (MedPAC), have previously expressed concerns about the potential for over-utilization of ancillary services via the IOAS exception. See MedPAC's *Report to the Congress, Aligning Incentives in Medicare*, June 2010.¹ One concern is that allowing physician self-referral for certain designated health services results in a financial incentive for the referring physician to order excessive or inappropriate services with little patient benefit. In contrast, supporters of the IOAS exception note that physicians are better able to coordinate and monitor patient care and treatment provided in their own office or group practice, and that such services are more convenient to patients.

Soon after the Congressional Budget Office (CBO) released its report, *The 2012 Long-Term Projections for Social Security: Additional Information*, in early October 2012, projecting increasing shortfalls in the Social Security program since the prior year, the President of the American Academy of Orthopedic Surgeons (AAOS) issued an alert to its members to report that the Senate Finance Committee had requested the CBO examine the potential costs of the IOAS exception to the Medicare and Medicaid programs. Based on concerns that any identified cost savings from limiting the IOAS exception would be appealing to legislators in the current fiscal environment, AAOS' President

¹This report is available at: http://www.medpac.gov/documents/Jun10_EntireReport.pdf.



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reportedly reached out directly to the director of CBO to address the value of the IOAS exception and the potential impact of its elimination on patient care and efficiency, and noted that AAOS and its strategic partners would strongly oppose any legislative efforts to limit the exception. Other physician groups, such as the American Society of Nuclear Cardiology, are likewise marshaling opposition to any narrowing of the Stark IOAS exception.

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