

Physician Self-Referral Provisions – Section 1877 of the Social Security Act

A physician cannot refer a Medicare or Medicaid patient for a designated health service to an entity with which the physician or an immediate family member has a financial relationship unless an exception applies.

The statute is an important and powerful tool in the fraud and abuse arsenal:

- It acts prospectively to prohibit relationships that have been shown to encourage overutilization or increase program costs
- It is especially important for hospital/ physician relationships, since all hospital services are designated health services
- It is a strict liability statute so unnecessary to prove knowledge or intent. Innocent violations trigger denial of payments

Our philosophy in Phase I and Phase II:

- Interpret prohibitions narrowly and exceptions broadly
- Interpret the statute so it will not adversely affect patient care
- Conform regulations to other CMS payment and coverage policies to the extent possible
- Establish bright lines and administrative simplicity where possible

The designated health services:

- Clinical laboratory services
- Physical therapy and speech-language pathology services
- Occupational therapy services
- Radiology services: including MRIs, CT scans, and ultrasound services
- Radiation therapy services and supplies
- Parenteral and enteral nutrients, equipment and supplies
- Prosthetics, orthotics, and prosthetic devices and supplies
- Home health services
- Outpatient prescription drugs
- Inpatient and outpatient hospital services

The Phase I final rule with comment period (January 4, 2001; 66 FR 856) set forth provisions that account for over 75 percent of the comments on the January 9, 1998 proposed rule and the biggest conceptual issues:

- The prohibition
- Almost all definitions
- Exceptions in the law that apply to ownership, investment and compensation relationships

- We used our authority to create exceptions for situations in which there is no risk of program or patient abuse to include exceptions for:
 - A fair market value exception that may apply to almost any direct compensation relationship
 - A special exception for academic medical centers
 - An exception for non-monetary compensation up to \$300
 - An exception for medical staff benefits
 - An exception for indirect compensation relationships

The Phase II final rule with comment period:

- Responds to comments received on the Phase I final rule
- Cannot discuss this rule in detail because it has not yet been published
- Includes exceptions in the law, among others, that apply to:
 - Ownership and investment interests (publicly traded securities and mutual funds; hospitals in Puerto Rico; rural providers; and hospital ownership)
 - Compensation relationships (rental of office space and equipment; employment; personal service arrangements [independent contractors]; remuneration unrelated to the provision of designated health services; physician recruitment; isolated transactions; and payments made by a physician for items and services)
 - Considers the many requests for exceptions for professional courtesy and charitable donations by physicians
 - Addresses the “set in advance” provision, the effective date of which has been delayed from Phase I