Stark Law Violations & Ambulatory Surgery: What Whistleblowers Need to Know

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The Stark Law is a federal anti-fraud law that seeks to put patients over profits. It is in place to help ensure that medical decision-making and patient referrals are as free from financial incentive as possible.

Under the Stark Law, physicians can be held liable if they refer patients to anyone with whom they have a financial relationship. Ambulatory surgery centers are unfortunately vulnerable to violations of the Stark Law.

What is the Stark Law?

The Stark Law is governed by Section 1877 of the Social Security Act (42 U.S.C. 1395nn) and is sometimes referred to as the "physician self-referral law." When it was first passed in 1989, the Stark Law only prohibited physicians from referring patients to clinical laboratory services that they shared any kind of financial relationship with when the services are payable by Medicare.

Over the years, the scope of the federal Anti-Kickback Statute has expanded to include the following designated health services (DHS) payable by Medicare:

- Physical therapy services
- Occupational therapy services
- Outpatient speech-language pathology services
- Radiology, MRI, and imaging services
- Radiation therapy
- Medical devices, equipment, and supplies
- Prosthetics and orthotics

- Home health care and home health services
- Outpatient prescription drugs
- Hospital services, both inpatient and outpatient

While there are certain exceptions to the Stark Law, in general, if a physician or one of their immediate family members has a financial relationship to a medical service provider, they cannot recommend a Medicaid/Medicare patient of theirs to that provider.

Anti-Kickback Statute

The Anti-Kickback Statute is a criminal statute prohibiting offers or exchanges of financial incentive for referrals to services which are payable under federal health care programs. The Anti-Kickback Statute makes it illegal for doctors or physicians to accept overly high speaking fees, hotel accommodations, meals, travel, discounted rent, and any direct payments in exchange for a referral of their patient to a certain provider or pharmaceutical.

These anti-kickback statutes and laws are in place to prevent manipulation of patients in exchange for financial reward. Kickbacks can easily lead to the overuse of medical services and draining of shared taxpayer funds. They can also sway medical decision making away from a patient's best interests by incentivizing doctors to prescribe only the most profitable option.

Stark Law Violation Examples

To understand the Stark Law, consider a patient with a broken arm who needs to be seen by a radiologist. If the patient is covered by Medicaid/Medicare or other public healthcare funds and their doctor is married to the owner of a radiology clinic, it would be in violation of the Stark Law for the physician to recommend their spouse's practice for the X-ray.

Another example would be an oral surgeon with a patient who needs to be prescribed a pain relief drug after a surgery. It would be in violation of the Anti-Kickback Statute for the surgeon to prescribe a drug that they are being offered substantial speaking fees to promote. Both the pharmaceutical company and the surgeon could find themselves in violation of the Anti-Kickback Statute if the patient's prescription coverage is through public health funds in this scenario.

What is Ambulatory Surgery?

Ambulatory surgery is often referred to as outpatient surgery or a same-day procedure. Ambulatory surgery takes place when a patient can leave the hospital the same day as an operation and is not admitted for an overnight stay. These are often minimally invasive or low-risk procedures.

Some common examples of ambulatory surgery include wisdom tooth removal, root canals, cataract surgery, lumpectomy, carpal tunnel surgery, gastric bypass, cosmetic procedures, and many more.

Does Stark Law Apply to Ambulatory Surgery Centers?

Ambulatory surgery centers (ASC) are a worthwhile and profitable investment for the medical community, but they also come with their own risks. Ambulatory surgery centers can help lower costs for patients, offer more practical timelines for receiving care, and provide specialized medical staff dedicated to the procedure's outcome. However, it is critical to ensure that you are not in violation of the Stark Law when you open, invest in, or refer a patient to an ambulatory surgery center.

The Stark Law applies to a variety of ambulatory surgery centers such as outpatient facilities owned by hospitals, doctors' offices, and specialty or cosmetic procedure centers. If an ambulatory surgery center treats patients who are covered under public healthcare funds like Medicaid or Medicare, then compliance with the Anti-Kickback Statute and Stark Law should be top of mind.

Common red flags for Stark Law violations at ASCs include:

- Buying or selling shares in an ambulatory surgery center at a steep discount
- Buying out doctors who do not use the center
- Leasing equipment below fair market value
- "Per click" payment arrangements for equipment such as gamma knives, lithotripters, lasers, CT scanners, MRI machines, and more
- Sham directorships or ownership stakes in ASCs

When in doubt, consult with a qualified Stark Law attorney.

What Are Safe Harbors?

Safe harbors allow medical providers to circumvent anti-kickback laws and are in place to ensure that physicians can offer the best medical care possible, even in situations that may, on the surface, seem in violation of the Stark Law or the Anti-Kickback Statute. Many safe harbors are in place to protect surgeon- or physician-owned ambulatory surgical centers. Even as they may profit from referring patients to their services due to being able to charge a separate facility fee for the ASC, they may also be best qualified to provide outpatient surgery and care.

Stark Law and Anti-Kickback Penalties

Importantly, the Stark Law is a strict liability statute. This means that a Stark law violation does not have to be intentional to still be actionable. Physicians who violate the Stark Law can be excluded from participating in federal health care programs moving forward and may face additional civil penalties under anti-fraud statutes such as the False Claims Act.

Penalties for violations of the Stark Law include denied payments for services submitted or an order to refund existing payments. Physicians can also be fined up to $15,000 for each service that was provided in violation of the law, regardless of intent to violate. Additionally, providers may be liable for up to three times the total amount of improper payments that were initially received from Medicare/Medicaid, plus additional civil penalties of up to $100,000.

Violations of the Anti-Kickback Statute are punishable by fines of up to $25,000, as well as up to five years in jail. Additionally, prosecution under the Anti-Kickback Statute can lead to exclusion from federal health service reimbursement for the future. Violating the Anti-Kickback Statute can carry additional liability under the Civil Monetary Penalties Law, which can induce penalties of up to $50,000 per kickback, as well as treble damages per violation. Fines and damages can also be assessed under the False Claims Act at a rate of treble damages and a penalty of roughly $25,000 per violation, subject to inflation rates.

How to Report Ambulatory Surgery Centers for Stark Law Violations

With the help of a whistleblower lawyer, you can report violations of the Stark Law or kickbacks being offered to your employer in the medical field. By filing a lawsuit under the False Claims Act as a qui tam relator, you may qualify to receive protections against retaliation and whistleblower rewards. You can file your complaint anonymously through a qui tam law firm.

Once a case has been filed, the Department of Justice has a 60-day window to decide whether or not to investigate, during which the complaint remains sealed. If they decline to pursue the case further, you may have the option to follow up with your own lawsuit. If they take on the case, you will be asked to cooperate with the ensuing investigation.

Stark Law Whistleblower Rewards

Under the Stark Law, a qui tam relator is entitled to a possible whistleblower reward if the case is successful, as long as they did not plan or perpetrate the fraud and their information contributes to the financial recovery. Whistleblower rewards can reach up to 30% of the overall recovery. Because of the enormous financial penalties involved in kickback cases, whistleblower awards routinely reach into the thousands, or millions of dollars.

Whistleblower Protections for Reporting Ambulatory Surgery Centers for Fraud

A qui tam relator is protected by federal law from retaliation against their employer. The Whistleblower Protection Act defines retaliation as the "taking, failing to take, or threatening to take a personnel action because of an employee's whistleblower." Under the False Claims Act, you can sue for remediations such as reinstatement, double back pay with interest, reasonable legal fees, and more in the event that your employer retaliates against you because of your honesty.

Stark Law Cases Involving Ambulatory Surgery Centers

Recently, the Department of Justice has shown renewed vigor in pursuing cases involving the Stark Law and ambulatory surgery centers. Whistleblowers can come forward with information about fraud and receive possible recoveries like the following:

- In one Georgia case, a whistleblower received over $1.3 million for reporting on a revenue sharing scheme involving a surgeon and anesthesia provider. According to allegations, Care Plus approached numerous ambulatory surgery centers throughout Georgia, Florida, Texas, Alabama, and South Carolina and offered kickbacks as well as subsidies to surgeons in exchange for choosing their pharmaceuticals and supplies.

- In a second anesthesiology-related kickbacks case, two Florida companies allegedly induced ambulatory surgical centers to waive copayments for their fees if patients agreed to receive their anesthesia through injections. The companies also allegedly violated the False Claims

Act by improperly billing for services such as psychological testing. The settlement reached over $1.6 million.

- A notable case involving Meridian Surgical Partners saw a $5.12 million settlement after a business office manager at one of the company's ambulatory surgical centers blew the whistle on fraudulent payments in exchange for patient referrals. The payments were disguised as minority ownership stakes in the surgical centers. The whistleblower in this case continued to pursue the matter after the government declined to intervene in the case, leading to a successful outcome.

Report Ambulatory Surgery Stark Law Violations with the Help of a Qui Tam Attorney

If you are confused by the limitations of the Stark Law or concerned that your care facility may be in violation of anti-kickbacks laws, contact a qui tam attorney who can consult with you about the specifics of your situation. Your information can help remove bad actors and may be worth a substantial reward.

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