

Stark Law Overhaul Gains Traction On Capitol Hill

By **Jeff Overley**

Law360, New York (July 12, 2016, 3:46 PM ET) -- U.S. senators on Tuesday expressed openness to tweaking the Stark Law's restrictions on physician referrals, acknowledging concerns that the limits are hindering new models of coordinated care.

The signals came during a Senate Finance Committee hearing focused on potential changes to the law, which often prevents doctors from referring patients to entities with which they have financial relationships. The law's intent is to shield physician judgment from financial considerations. But there is some concern that, despite having more than 30 exceptions, it inhibits new delivery models that encourage providers to team up and coordinate care.

"If, as some have claimed, the Stark Law is impeding the implementation of recently passed health reforms ... and preventing better integration in the delivery of medical treatment, we should address that," said Sen. Orrin Hatch, R-Utah, the committee's chairman.

Sen. Ron Wyden, D-Ore., added that "revisiting the rules that are already on the books" may be in order.

When the Stark Law passed more than 20 years ago, Medicare was firmly fee-for-service, simply paying doctors based on volume of services. But things have changed dramatically, and 30 percent of Medicare payments are now linked to quality, according to federal regulators.

Many new payment models were ushered in by the Affordable Care Act. In addition, Congress last year made major changes to Medicare's physician reimbursement system, likely driving even more doctors into alternative payment models.

"The goals of these new payment systems are diametrically opposed to the goals of the Stark Law," Crowell & Moring LLP partner Troy Barsky told lawmakers. "New health care payment models are designed to integrate providers clinically and financially, while the Stark Law is designed to keep parties financially separated."

Panelists who testified Tuesday were generally fine with continuing to prevent doctors from sending patients to health care entities that they own, either partly or fully. But the panelists agreed that simple compensation arrangements with health care entities are less likely to make referrals improper.

"I believe that the compensation aspect of Stark should be eliminated. I think that that would give a lot more clarity to the Stark Law," said Peter Mancino, deputy general counsel at The Johns Hopkins Health

System Corp.

Panelists generally praised efforts by the Centers for Medicare & Medicaid Services to waive certain provisions of the Stark Law in order to accommodate innovative delivery models. But they also agreed that the agency has mostly exhausted its authority, and that Congress needs to grant new powers or act on its own to loosen the law.

“CMS simply doesn’t have the legislative authority to go further,” said Ronald A. Paulus, CEO of the Mission Health hospital chain in North Carolina. “Only Congress can remove those barriers.”

For all the hostility toward the Stark Law on Tuesday, there was occasional support for making the law stronger. For example, Barsky urged lawmakers to scrap the so-called in-office ancillary services exception, a controversial provision that lets physicians refer Medicare patients to their own practices in some cases.

"Closing this exception will incentivize physicians to move to these new models," Barsky said.

The Stark Law has factored into a number of hefty payouts from offending providers over the years. Recent examples include a \$115 million deal with Florida-based Adventist Health System-Sunbelt Inc., a \$70 million accord with Florida-based North Broward Hospital District and a \$72 million settlement with South Carolina-based Tuomey Healthcare System Inc.

It’s likely that any changes to the Stark Law would be tucked into a larger piece of legislation. Lawmakers didn’t offer specifics on Tuesday, but they predicted some sort of action soon.

“We’re going to try and do something about this before the end of the year,” Hatch said.

--Editing by Patricia K. Cole.

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