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HEALTH LAW

Referral Schemes at Imaging Centers

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The Illinois Attorney General recently filed suit against more than 20 Chicago-area MRI centers, alleging that the centers participated in an increasingly common and widespread scheme to win referrals by paying illegal kickbacks to physicians [1]. This case and similar filings in Florida and Louisiana have caught the attention of both doctors and lawyers since a ruling could affect the structure and practice of radiology.

The expansion of independently owned MRI and other imaging centers has the potential to improve patient access to these services by containing costs and providing increased care to underserved populations. Special attention must be paid, however, to ensure that agreements between these providers and physicians do not run afoul of state and federal fraud and abuse laws.

The federal Medicare and Medicaid programs are the single largest purchaser of health care in the world, with federal expenditures reaching \$515 billion in fiscal year 2005 [2]. There are many opportunities to defraud this unwieldy system, and doing so can be lucrative. The Centers for Medicare and Medicaid Services (CMS) and the Office of the Inspector General for the Department of Health and Human Services have been proactive in countering fraud and abuse in the health care industry. Two federal laws in particular—the Medicare and Medicaid Antikickback Statute and the Stark Law—are sources for establishing the legality of physician financial interests in radiology facilities.

The antikickback statute prohibits knowingly or willfully paying or receiving remuneration in cash or services in exchange for prescribing, purchasing, or recommending any treatment, goods, or services for which payment will be made through Medicare, Medicaid, or any other federally funded health care program [3]. The statute prohibits not only overt kickbacks or bribes, but an array of significantly more complex economic relationships.

The antikickback laws work in combination with the Stark Law (named for Representative Fortney “Pete” Stark, a democratic congressman from California), which prohibits physicians from referring Medicare or Medicaid patients for designated health services (including radiological services) to an entity in which the physician or an immediate family member has a financial interest [4]. As in the antikickback statute, this financial interest is defined broadly, but both laws provide

a number of safe-harbor provisions. Most notably, the Stark Law makes an exception for the provision of in-office ancillary services. Violation of the Stark Law can result in nonpayment for the claim in violation of the law, exclusion from participation in Medicare and Medicaid, and civil monetary penalties of up to \$15,000 per violation [5]. Violation of the antikickback statute is a felony, and can result in a fine of up to \$25,000 and five years' imprisonment [6].

The practices at issue in the Illinois lawsuit, and in others around the country, are arguably in violation of the antikickback statute, the Stark Law, and similarly functioning laws protecting privately insured patients in 36 states. The scheme usually begins with imaging centers' offering leases to physicians. The sham leases make it seem as though the provision of these designated health services would fall under the Stark Law's in-office ancillary services safe harbor. The imaging center then charges the physician a discounted flat fee for each MRI performed. The physician bills patients' private insurer, Medicare, or Medicaid for the MRI at whatever rate those entities will reimburse, and the physician pockets the difference. In one scheme, group practice members were told they could net about \$843,000 over five years if they referred just five patients a day for scans [7]. The number jumped to over \$2.1 million if the practice referred 10 patients a day. These schemes seem to have led to an increase in the number of imaging scans performed, drastically raising Medicare and Medicaid costs. Between 2000 and 2005 Medicare spending for imaging services more than doubled, from \$6.6 billion to \$13.7 billion [8]. A 2004 study in the *Journal of the American College of Radiology* found that an estimated \$16 billion in diagnostic imaging was unnecessary and ordered by doctors who made money from having the procedure performed [9].

Proponents of these relationships can argue that, without physician interest and investment in imaging centers, some patients—particularly those in rural or underserved areas—would not receive the care they need. They may argue that physician involvement actually improves quality of care, inasmuch as physicians refer patients only to those centers where they will receive the best care, and that the doctor's integrity and ethical guidelines will limit referral for unnecessary scans. Opponents, however, look at the rising costs of care and the potential for huge profits and argue that whatever the best intentions of physicians may be, these relationships need to be regulated and maintained within the scope of the law. New rules regarding the Stark Law, set to be released by CMS by the end of 2007, and the eventual decisions in lawsuits such as the one brought by the Illinois Attorney General, should enable physicians to offer quality, necessary care to their patients, while remaining within the bounds of the law.

References

1. Japsen B. Illinois to refile lawsuit on MRIs. *Chicago Tribune*. September 13, 2007:C1. http://www.chicagotribune.com/business/chithu_mri_0913sep13,0,373664.story. Accessed October 2, 2007.
2. McGuire D, Scheider M. Health care fraud. *Am Crim L Rev*. 2007;2(44):633, 635.

3. Criminal Penalties for Acts Involving Federal Health Care Programs. 42 USC sec 1320a-7b(b).
http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00001320---a007b.html. Accessed October 19, 2007.
4. Limitation on Certain Physician Referrals. 42 USC sec 1395nn(a).
http://www.law.cornell.edu/uscode/html/uscode42/usc_sec_42_00001395--nn000-.html. Accessed October 19, 2007.
5. McGuire D, Scheider M, 668.
6. McGuire D, Scheider M, 646.
7. Armstrong D. US seeks to more tightly restrict doctors' billings for medical tests. *Wall Street Journal*. October 23, 2006:A1.
8. Armstrong D. Medicare moves to cut self-referral practice. *Wall Street Journal*. September 12, 2007:B1.
9. Japsen B. Suits throw light on MRIs. *Chicago Tribune*. February 11, 2007:C1.

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