

FEDERAL HEALTH CARE REFORM

New Disclosure Requirements For Imaging Services Under the Stark In-Office Ancillary Services Exception

This is the first in a series of Legal Alert emails highlighting some of the key provisions in the Patient Protection and Affordable Care Act, as modified by the Health Care and Education Reconciliation Act of 2010 (collectively, the "Health Care Reform Act"). This Legal Alert summarizes the new disclosure requirements for medical providers utilizing the "In-Office Ancillary Services" exception (the "IOAS Exception") to the federal Stark law to provide certain imaging services to their patients.

- The federal Stark law generally prohibits a physician from making referrals to their own practice for the furnishing of certain designated health services ("DHS") reimbursable by Medicare, unless an applicable exception to the law is satisfied. Generally, the IOAS Exception, if met, permits physicians to make referrals of certain DHS (including, among others, certain imaging services) within the referring physician's own practice.
- The Health Care Reform Act requires providers utilizing the IOAS Exception for the provision of certain imaging services to provide patients with written notification, at the time of the referral, that the patient may obtain the services from someone other than the referring physician or the referring physician's group practice. Specifically, the written notice must provide the patient with a written list of other suppliers who furnish services in the applicable service area. Currently the list of covered services includes magnetic resonance imaging ("MRI"), computed tomography ("CT") and positron emission tomography ("PET"). This list is subject to expansion by the Centers for Medicare and Medicaid Services ("CMS").
- While the Health Care Reform Act was signed into law on March 23, 2010, this notification requirement purports to be retroactive to January 1, 2010 and therefore applies to services furnished on or after January 1, 2010. While there is some question as to whether disclosure is required right now or after CMS issues regulations, we recommend compliance at this time as to MRIs, CTs and PET. We expect that CMS will be issuing regulations incorporating this new requirement and addressing whether any additional requirements apply or whether additional DHS will be subject to this disclosure requirement. We will keep you apprised of these changes.

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If you have any questions, please contact the GW attorney with whom you regularly consult or send us an email at HCR@garfunkelwild.com.

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