Self-Referral Landscape for Radiation Oncology

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Radiation oncology is a discipline that, while cognizant of its foundation in radiology, aims to retain its unique scientific and clinical status. For purposes of the Stark self-referral law and regulations, radiation oncology is well-recognized as a distinct area of health care delivery. Since Congress expanded the range of “designated health services” via Stark II in 1993, radiation oncology—referred to in Stark as “radiation therapy services and supplies”—has had its own legal status.

This carries both opportunity and risk for ACR members who practice as radiation oncologists. Both radiation oncology and diagnostic radiology may qualify for the “consultation” exemption from the Stark law if certain criteria are met. Thus, radiation oncologists may render therapeutic care to Medicare and Medicaid patients and consult with other physicians without meeting a separate regulatory exception under Stark.

On the other hand, some clinical and financial relationships between radiation oncologists and their referring physicians could encounter Stark problems if not properly structured. In view of the 2006 federal election results, the ACR anticipates that the 110th Congress might push the Centers for Medicare and Medicaid Services (CMS) to scrutinize self-referral arrangements more closely. Thus, radiation oncologists need to heed the Stark rules more closely than ever and should engage experienced health care counsel in doing so. They also should talk with their attorney about potential anti-kickback issues that could arise in clinical and financial arrangements with others.

Scope of consultation carve-out: Stark generally prohibits physicians from referring patients to medical facilities in which the physicians have a financial interest. Congress established the carve-out from “referral” because it understood that radiation oncologists generally do not refer patients and thus are not in a position to influence referrals for financial gain. If another physician seeks a consultation with the radiation oncologist or another radiation oncologist in the same group, the Stark law allows radiation oncologists to request radiation therapy services. Either the radiation oncologist who receives the consultation request or another radiation oncologist in the same group must directly furnish or supervise the radiation therapy services.

Good news for radiation oncologists: In the March 2004 Stark regulation, CMS extended the consultation exception to permit radiation oncologists to use diagnostic imaging equipment for treatment planning and delivery.

PET and nuclear medicine back in Stark: After receiving extensive comments from the ACR and other medical organizations, CMS decided to apply the full Stark restrictions to referrals for PET and other nuclear medicine studies. Consequently, as of January 1, 2007, radiation oncologists must carefully follow the consultation path when providing therapeutic nuclear medicine services. Otherwise, they will need to meet a Stark exception, such as the in-office ancillary services or rural provider exception.

Risky business: The ACR has learned of certain ventures that could pose legal risk to radiation oncologists under Stark. For example, companies controlled by other specialists reportedly have offered radiation oncologists ownership stakes, employment opportunities, or lucrative equipment deals. Such ventures may not meet a Stark exception and thus may result in a prohibited referral. More ominously, they could lead to potential civil liability for any radiation oncologist who directly bills Medicare or Medicaid for related radiation therapy services, or on whose behalf those services are billed. Check with a qualified health care attorney before committing you and your practice.

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The ACR Legal Department welcomes questions from members on general legal topics. We cannot provide specific legal advice but will answer questions that apply broadly to radiologists and their practices. Please submit questions in writing to:

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