Why Does the ACR Accredit Self-Referring Facilities?

THE COLLEGE FIGHTS SELF-REFERRAL THROUGH VARIOUS AVENUES BUT, LEGALLY, ACCREDITATION CANNOT BE ONE OF THEM.

Some members have asked the provocative question of the ACR Legal Department. They express concern — and frustration — that their College offers accreditation to imaging and radiation therapy facilities owned and operated by non-radiologists. These members report that many clinician-owned and -operated facilities regularly self-refer patients for additional imaging and therapeutic studies. Most notably, they assert that the ACR should stop accrediting facilities that have engaged in this practice.

The answer is that the law — as it relates to antitrust and the Medicare Improvement for Patients and Providers Act (MIPPA) — requires the ACR to do so. Why? We outline in this column that the ACR must establish and maintain “alternate pathways” to allow any qualifying imaging facility — no matter who or what owns it — to receive accreditation. Just as importantly, we emphasize that the College still fights hard in Congress and state legislatures against physician self-referral. Broad accreditation programs and vigorous advocacy against self-referral do not have to be mutually exclusive.

We have written in prior columns that the ACR must comply with federal and state antitrust laws.1 Governments enacted these laws to protect competition that should benefit the public as patients and consumers, rather than the competitors who may be harmed by the prohibited practices. Consequently, organizations such as the ACR that offer accreditation services (particularly if reimbursement depends on obtaining accreditation, as discussed below) cannot decide to exclude a certain market segment. Non-member and non-radiologist individuals and groups must have an opportunity to compete.

The stakes for noncompliance with antitrust laws are high. Federal and state antitrust enforcers watch this area closely and could pursue legal action against the College for alleged anticompetitive conduct. Alternatively, a private entity, like a cardiology or orthopedic group, also might pursue legal action against the ACR for failing to allow an equal playing field.

To ensure that we comply with these regulations, the ACR has implemented a formal antitrust policy for its members, staff, and meetings. Significantly, this policy states that the ACR will not become involved in the competitive business decisions of its members, nor will it take any actions that would restrain competition. The ACR is firmly committed to the principle of competition served by the antitrust laws, and good business judgment demands that every effort be made to ensure compliance with all applicable federal and state antitrust laws and trade regulations.2

The Board of Chancellors adopted the policy and reiterates it at each ACR board meeting.

Another reason to maintain an open pathway relates to the ACR’s status under MIPPA. CMS designated the College as one of four organizations authorized under MIPPA to accredit facilities for the technical component of advanced diagnostic imaging.3 Federal requirements to receive such designation left no room for designees to look behind the business models of prospective imaging suppliers. Put simply, MIPAA requires the four approved accrediting bodies to accept applications from all providers. Therefore, ACR accreditation must focus on the quality of imaging and therapeutic care, not on physician self-referral. Certain individuals and entities that seek ACR accreditation may self-refer patients for more imaging. Yet the ACR must disregard such conduct as a matter of law — within the accreditation sphere.

Do these legal restrictions end the story? Not at all. The ACR steadfastly fights against self-referral in the legislatures and the courts. You may recall that the College worked closely with the Maryland Radiological Society (the Maryland chapter of the ACR) to have Maryland courts uphold that state’s renowned self-referral law. The law prohibits non-radiologists, non-radiation-oncologists, and their group practices in Maryland from practicing MRI, CT, or radiation therapy services in their offices. Maryland’s highest court affirmed the law in 2011. The ACR and the Maryland chapter continue to defend the law against repeated efforts by self-referring forces in the Maryland legislature.

On the federal level, the College has worked with members of Congress to tighten the notorious in-office ancillary services exception to the Stark self-referral law. At least one current bill in Congress would eliminate that exception. The ACR played a key role in drafting that legislation. Although a large coalition of medical groups bitterly opposes limiting the in-office exception, the ACR still engages lawmakers about this critical issue.

Accreditation of imaging entities ultimately aims to further quality care. If applicants happen to self-refer, that is unfortunate but the ACR cannot use the accreditation process to stop it. But the College can and does use legal means to address conduct that, in the words of the Government Accountability Office, have posed “unacceptable risks” for patients.4

ENDNOTES