

HEALTH CARE REFORM

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After 2010, physicians will be prohibited from owning an interest in a hospital and those hospitals with physician ownership prior to 2011 will be prohibited from expansion. Physicians and group practices that rely on the in-office ancillary services exception to the Federal Stark Law to refer certain services to entities in which they have ownership interests will be required to disclose certain information to the patient in writing. Also, PPACA amended the "intent" requirement in the Anti-Kickback Statute, providing that "specific intent" is not required to violate the statute, making it easier to prosecute providers and suppliers under the Anti-Kickback Statute. PPACA also imposes additional obligations on non-profit, tax exempt hospitals, relating to community health needs assessments and financial assistance policies, among others.

Although the passage of PPACA is considered a major step toward health reform, full implementation of the law will not be complete for many years as thousands of pages of regulations still need to be issued by the Secretary. Thus, the majority of the work in implementing and understanding the full and practical impact of the legislation will come through 2014 and beyond. Miller Canfield's health law attorneys are dedicated to staying continuously informed of all newly issued regulations, rules, and notices relating to PPACA to ensure that our clients in the health care industry are well-versed in how this law impacts their business practices.

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STARK LAW COMPLIANCE

Section 6003 of PPACA amends the in-office ancillary services exception of the Stark Law to require physicians who refer patients for MRI, CT, PET, and certain other imaging services to inform the patient at the time of the referral that he/she may obtain the service from suppliers other than the referring physician or the physician's group practice. Section 6003 further requires referring physicians to provide the patient with a list of alternative suppliers in the area in which the patient resides.

Section 6003 contains ambiguities which leave important aspects of these requirements open to interpretation. However, on July 13, 2010, CMS, a branch of HHS, issued a proposed regulation (Proposed Rule) which, if adopted, will provide helpful clarifications.



Primarily, despite the January 1, 2010, effective date provided for under Section 6003, CMS proposes a January 1, 2011, effective date. Further, CMS indicates that it is not inclined to expand the requirement to services other than MRI, CT, and PET, and clarifies what must be included in the list of alternative suppliers.

The Proposed Rule requires that a copy of the notification, signed by the patient, be maintained in the patient's medical record. The comment period on the Proposed Rule ends August 24, 2010. If you would like more information or would like us to file comments with CMS on behalf of your organization, please contact the author or Billee Lightvoet Ward at 269.383.5860.

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