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Stark Reality

Dentists must be in compliance with federal anti-kickback laws and self-referral laws. The latter is often referred to as the Stark Law in recognition of its legislative creator, Congressman Pete Stark (D-13th Calif.). The ADA has addressed these issues in their recently updated publication *The ADA Practical Guide to Frequently Asked Legal Questions*. Specifically, they note that:

- A dentist risks violating federal and state anti-kickback and self-referral laws if he or she might receive a direct or indirect benefit from referring a patient.
- Federal law makes it a crime to pay or receive (or even to offer or solicit) any kind of remuneration for a referral for which a federal health care program will pay in whole or in part. This is a felony punishable by fines of up to \$25,000 and/or up to five years in prison. However, there are a number of “safe harbors” that provide exceptions. For example, a physician can rent office space from a dentist, provided that the rent is consistent with fair market value and does not take into account the volume or value of referrals.
- Under the Stark law, a dentist may not refer Medicare or Medicaid patients to a “designated health services” entity where the dentist or an immediate family member has a direct or indirect financial relationship, unless an exception applies.
- While the Stark law only covers Medicare and Medicaid patients, it is prudent to have a compliance policy for all patients because a simple oversight as to patient eligibility for these programs could lead to Stark liability.¹

There is also new law in this area under the Patient Protection and Affordable Care Act (PPACA) aka the health care reform law:

- Section 6402 provides that an “overpayment” is any funds received or retained under Medicare or Medicaid to which a person is not entitled. A provider must report and return overpayments by the later of: 60 days after the date of identification of the overpayment; or the date when a corresponding cost report is due, if applicable.
- Section 6409 requires the Centers for Medicare and Medicaid Services (CMS) to publish a protocol advising providers and suppliers how they may voluntarily disclose actual and potential violations of the Stark Law.

The Stark Law Self-Referral Disclosure Protocol was posted on the CMS website on Sept. 23, 2010, and is accessible at http://www.cms.gov/PhysicianSelfReferral/65_Self_Referral_Disclosure_Protocol.asp#TopOfPage.

While utilizing this protocol is not risk-free, the benefits of self-disclosure would be a reduction in the provider’s financial and legal exposure, including the ability to avoid exclusion from the Medicare or Medicaid programs and to protect from a whistleblower action. However, there are downsides to consider, including a waiver of appeal rights.

Because of the complexity of these laws, any question about receiving or providing benefits for patient referrals, or your financial interest in another health care facility where your patients might be referred, should be reviewed by an attorney experienced in health law. Yes, this is burdensome, but it is the stark reality.

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¹See ADA Guide, Chapter 26, Questions 174-177, pp. 108-110.