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## Physicians Implement Now!: In-Office Ancillary Services New Disclosure Requirements

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act ("PPACA")<sup>1</sup> into law. As discussed in our previous edition of [Health Industry Online](#), the provisions of PPACA are far reaching and will significantly impact the delivery and regulation of health care in the United States for the foreseeable future. One such regulatory change is the addition of certain disclosure requirements to the in-office ancillary services ("IOAS") exception to the federal physician self-referral law, commonly known as the Stark Law.<sup>2</sup>

Briefly, the Stark Law prohibits a physician from making referrals for designated health services ("DHS") payable by Medicare or Medicaid to an entity with which the physician (or an immediate family member) has a financial relationship, unless an exception applies. The Stark Law also prohibits the DHS entity from filing a claim for those referred services unless an exception applies. The Stark Law is a strict liability statute and each element of an exemption must be satisfied. In general terms, the IOAS exception mandates: (1) who can provide the DHS; (2) where the DHS can be provided; and (3) who can bill for the DHS.<sup>3</sup> As a result of PPACA, physicians must also meet certain disclosure requirements to meet the requirements of the IOAS exception.

Section 6003 of PPACA amends the IOAS exception by adding the requirement that referring physicians provide notice to their Medicare patients **in writing**, at the time of a referral for in-office ancillary magnetic resonance imaging (MRI) services, positron emission tomography (PET) services and computed tomography (CT) services, and other imaging services that the Secretary of Health and Human Services determines appropriate: (1) that the patient may obtain such services from a provider other than the referring physician or a member of the referring physician's group practice and (2) provide the patient with a list of other providers who furnish the service in the area where the patient resides.

Under Section 6003, the disclosure requirements apply to MRI, PET and CT services furnished on or after **January 1, 2010**. Hopefully, future guidance will provide direction regarding the application and implementation of the new requirements. While Texas law already requires providers to notify patients of any financial relationships the providers have with an entity to which they are referring a patient, providers relying on the IOAS exception for DHS referrals under the Stark Law should adopt written notice documents or make appropriate modifications to existing notice documents when referring patients for the noted imaging services. These activities should be completed as soon as possible in light of the effective date of the change to the IOAS exception.

<sup>1</sup> Patient Protection and Affordable Care Act, HR 3590, Pub. L. 111-148 (Mar. 23, 2010); see Health Care and Education Reconciliation Act of 2010, HR 4872, Pub. L. 111-152 (Mar. 29, 2010).

<sup>2</sup> 42 U.S.C. § 1395nn.

<sup>3</sup> 42 U.S.C. § 1395nn(b)(2).

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