

## **Lawmakers Introduce Bill To Exempt APMs From Stark Law Provisions**

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A bipartisan group of House lawmakers Wednesday (April 10) reintroduced legislation to give CMS the authority to exempt alternative pay models and those under development from some Stark, or physician self-referral, law provisions, shortly after HHS Deputy Secretary Eric Hargan assured attendees at the American Hospital Association that the department would issue rules as fast as it can easing the Stark and anti-kickback statutes' restrictions on value-based pay.

A legislative proposal in the president's fiscal 2020 budget to reform the Stark law mirrors CMS' administrative focus on easing restrictions from the law on those interested in value-based care, according to lobbyists, and after the budget was released last month some said they expected the agency to do more than Congress on Stark law reform.

Reps. Raul Ruiz (D-CA), Larry Bucshon (R-IN), Ron Kind (D-WI) and Kenny Marchant (R-TX) reintroduced the Medicare Care Coordination Improvement Act of 2019 in the House on Wednesday shortly after Sen. Rob Portman (R-OH) and Michael Bennet (D-CO) introduced their version in the Senate April 1. The bill would provide alternative pay models the same physician self-referral waivers that accountable care organizations were granted by the Affordable Care Act. It also would give providers working to develop a new demo that CMS determines "constitutes significant progress toward establishing (an APM) model" a three-year waiver. Plus, the bill would let APMs and those testing potential APM models get around the Stark law's so-called volume or value prohibition.

The Large Urology Group Practice Association backed a version of the bill last year, along with multiple medical groups that collectively represent over 500,000 providers. LUGPA Chairman of Health Policy Deepak Kapoor said that last year's bill had broad bipartisan, bicameral support, but the clock simply ran out. He noted the current bill would put in place a fairly narrow reform designed to accommodate APMs and make it easier for physicians to test models as necessary before bringing them to the Physician-Focused Payment Model Technical Advisory Committee or CMS' innovation center.

As CMS works to make anticipated changes to the Stark law, LUGPA continues to push for statutory change as well, Kapoor said. The efforts, he said, are likely to be complementary.

"We welcome official feedback from CMS on this legislation," a Bucshon staffer told Inside Health Policy. The staffer also noted the bill is bipartisan but said changes to the Stark law have traditionally lacked support from House Democrats. Ruiz's office at press time had not responded to questions on the bill's path forward this Congress.

The HHS budget-in-brief lays out legislative proposals to: create a new exception to physician self-referral law for alternative pay models in 2021 and identify the types of arrangements, minimum risk levels and participation level needed for providers to qualify; set up a process for 2021 that would allow physicians to self-report inadvertent, technical non-compliance violations

of the Stark law; and exclude physician-owned distributors from the indirect compensation exemption if more than 40 percent of the physician-owned distributor's business is generated by the physician owners.

Shortly after the budget was released, Troy Barsky with Crowell and Moring said the first part of the legislative proposal is similar to an idea on which CMS sought feedback in a request for information on ways to reform the Stark law to ease the burden on value-based payments. But while the budget proposal is legislative, Barsky said by all accounts CMS and HHS seem to believe they already have authority to make changes in this area. In some ways, because the budget proposal is focused on APMs rather than all value-based pay arrangements, Barsky said the first part of budget's legislative proposals on Stark law may be narrower than the RFI.

Hargan on Monday (April 8) told attendees at AHA's annual meeting that it is hard to overstate how much the Stark law would prevent paying for value. He noted the current law doesn't have specific exceptions for value-based pay, and said exceptions and safe harbors can and should be reoriented to help transition the country to a better health system. The system will get what it permits, and if value-based compensation isn't permitted then it is a bit odd to lament that such agreements aren't more prevalent, Hargan added.

He told AHA the department is working on the so-called Regulatory Sprint to Coordinated Care but cautioned that a sprint for the government is not necessarily fast.

Barsky said he anticipates CMS' administrative changes to the Stark law will be fairly broad, and the question will be how lawmakers react. Senate Finance Committee Chair Chuck Grassley (R-IA) has said that the Stark law is an area of interest for him, and Barsky said he expects others on the committee will be active in this area as well. In the House, Barsky said the question will be whether the lawmakers' oversight role encourages or hinders CMS' activity. -- Michelle M. Stein ([mstein@iwppnews.com](mailto:mstein@iwppnews.com))