

LAWYER

THE HILLSBOROUGH COUNTY BAR ASSOCIATION
TAMPA, FLORIDA | FEBRUARY 2014 | VOL. 24, NO. 4



FLORIDA'S PATIENT SELF-REFERRAL ACT: THE STARK LAW ON STEROIDS

Health Care Law Section

Chairs: T.J. Ferrante - Carlton Fields Jordan Burt, P.A.; and Sara Younger - BayCare Health Systems, Inc.



The federal Stark Law, 42 U.S.C. § 1395nn, regulates referrals of specific “designated health services” payable by federal insurance programs such as Medicare and Medicaid by physicians who have financial relationships with entities to which they refer such services. The law has resulted in a maze of complex and rapidly evolving regulations, leaving providers in a quandary as to which types of referrals are permissible.

Complicating matters even further is the Florida Patient Self-Referral Act of 1992, Section 456.053, Florida Statutes (the Florida Act), which the American Medical Association has described as “the most complicated and perhaps the most restrictive self-referral law of any of the states.”¹ The Florida Act serves a similar purpose as the Stark Law and contains some overlapping language, but it does not expressly tie itself to the Stark Law. Rather, the Florida Act stands on its own as a separate prohibition. In January 2013, the Eleventh Circuit held that the Stark Law does not pre-empt the Florida Act.²

In one respect, the Florida Act is narrower than the Stark Law because it prohibits referrals only

when a provider has a direct or indirect investment interest in the entity receiving the referrals. In contrast, the Stark Law applies to a host of financial relationships, including investment interests and other relationships such as independent contractor relationships. In two other respects, however, the Florida Act is broader. First, it applies to referrals of any health

services, not just “designated health services.” Second, the Florida Act applies regardless of who pays for the referred services, whereas the Stark Law is limited to services payable by federal insurance programs.

The Florida Act and the Stark Law contain two largely distinct sets of exceptions to their referral prohibitions. The most important exception that is common to both laws is the “in-office ancillary services exception,” which allows providers to refer ancillary services such as imaging and laboratory services to their own group medical practices. Although both laws embrace this general principle, the Florida Act, true to form, is more restrictive. First, the Florida Act requires one of the physician members of the practice to be in the office while



The law has resulted in a maze of complex and rapidly evolving regulations, leaving providers in a quandary as to which types of referrals are permissible.

the ancillary services are performed, whereas in many cases the Stark Law does not. Second, the Florida Act requires that the ancillary services be provided solely for the benefit of patients of the practice, prohibiting the acceptance of outside referrals for such services (except that the practice may accept up to 15 percent

outside referrals for diagnostic imaging services if it meets a host of onerous requirements). No such requirement is included in the Stark Law exception.

A violation of the Florida Act requires the entity to which the services were referred to forego any claim for payment for the services. If the entity knowingly submits a claim in violation of the Florida Act, the entity is subject to a civil penalty of \$15,000 per claim.

¹ <http://www.ama-assn.org/resources/doc/clrpd/self-referral-laws.pdf>

² *Fresenius Medical Care Holdings, Inc. v. Tucker*, 704 F.3d 935 (11th Cir. 2013).



Author: Jon Gatto, Carlton Fields Jordan Burt, P.A.

Save the date: Health Care Law CLE at noon on March 12. Call (813) 221-7777 to register.