

# Calls for Modernizing the Stark Law Continue; CMS Seeks Public Input on Stark Law Reforms

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Many regulatory and legislative calls for modernizing the federal physician self-referral law (or “Stark Law”) in light of the move to value-based payment under Medicare have been made in recent months. Most recently, a [hearing](#) on “Modernizing the Stark Law to Ensure the Successful Transition from Volume to Value in the Medicare Program” took place on July 17th with the House Ways and Means Subcommittee on Health. At the hearing, the Department of Health and Human Services (HHS), legislators and providers emphasized that the Stark Law has slowed the move to value-based payment under Medicare and that reforms to the Stark Law are needed.

Further, the Centers for Medicare & Medicaid Services (CMS) published a [Request for Information \(RFI\)](#) on June 25th regarding reducing the regulatory burdens of the Stark Law, with a particular focus on soliciting comments on how the Stark Law may impede care coordination initiatives. The RFI describes how transforming the healthcare system into one that pays for value is a key priority of HHS, and that HHS launched a “Regulatory Sprint to Coordinated Care” to accelerate this transformation. One of CMS’s goals in this Regulatory Sprint is to address “unnecessary obstacles to coordinated care, real or perceived, caused by the [Stark Law].” In a [press release](#) related to the RFI, CMS Administrator Seema Verma is quoted as follows: “We are looking for information and bold ideas on how to change the existing regulations to reduce provider burden and put patients in the driver’s seat. . . . Dealing with the burden of the physician self-referral law is one of our top priorities as we move towards a health care system that pays for value rather than volume.”

In the RFI, CMS requests public input on 20 different areas. These areas include, among others, the structure of existing or potential alternative payment models and other novel financial arrangements, what additional exceptions to the Stark Law are needed for these arrangements, the utility of certain existing exceptions to the Stark Law, and creating new defined terms and revising certain existing defined terms. CMS also requests comments on areas beyond care coordination initiatives, such as requests for input on defining “commercial reasonableness” in the context of Stark Law exceptions,

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qualifying as a “group practice,” other areas of Stark Law regulations that need clarification, and compliance costs for regulated entities.

The hearing and RFI continue the recent trend of regulatory and legislative initiatives aimed at modernizing the Stark Law in light of the move to value-based payment under Medicare. As we explained in our [prior post](#), a bill that addresses this very topic, titled the “Medicare Care Coordination Improvement Act of 2017,” was introduced in both the U.S. House of Representatives ([H.R. 4206](#)) and Senate ([S. 2051](#)) in November 2017. The bill is still under consideration in both the House and the Senate. (Please see our [prior post](#) for a detailed explanation of the bill.) As we also explained in this [prior post](#), in January 2018, CMS Administrator Verma identified Stark Law reform as a top policy priority and reported that an inter-agency group was being formed to review the law. Next, as the RFI describes, the President’s [fiscal year 2019 budget](#), which was released in February 2018, included a legislative proposal to create a new Stark Law exception for arrangements arising from alternative payment model participation.

Given these recent developments, Stark Law legislative and regulatory reforms are likely to occur in the near future. The RFI is a great opportunity for stakeholders to be involved in these reforms. CMS is accepting comments on the RFI through August 24, 2018. If you would like to submit comments, one of the authors or your regular Dorsey attorney would be happy to assist you.