

House Ways and Means Committee Health Subcommittee Hearing
Modernizing Stark Law to Ensure the Successful Transition from Volume to Value in the Medicare Program
July 17, 2018

On July 17, 2018, the House Ways and Means Committee Health Subcommittee held a hearing entitled, “Modernizing Stark Law to Ensure the Successful Transition from Volume to Value in the Medicare Program.” Witnesses included:

Panel 1

- Eric Hargan, Deputy Secretary, Department of Health and Human Services

Panel 2

- Gary M. Kirsh, M.D., President, The Urology Group
- Mike Lappin, Chief Integration Officer, AdvocateAuroraHealth
- Brian DeBusk, Ph.D., M.B.A., President and Chief Executive Officer, DeRoyal
- Claire M. Sylvia, Partner, Phillips & Cohen LLP

Full witness testimony is available [here](#).

In his opening remarks, Subcommittee Chairman Roskam (R-IL) called for updating the Stark laws and for giving the Centers for Medicare and Medicaid Services (CMS) more flexibility to provide waivers. Subcommittee Ranking Member Levin (D-MI) spoke about the need to proceed with care and said that the core principle of the law is simple – providers should not refer when they have a financial interest.

First Panel

Department of Health and Human Services (HHS) Deputy Secretary Hargan was the only witness on the first panel. He testified that the Department is open minded about the changes that might be needed to the law and referenced the Request for Information (RFI) that was opened last month.

Rep. Johnson (R-TX) asked Hargan a series of questions about the Affordable Care Act’s (ACA) ban on the expansion or new construction of specialty hospitals. He asked Hargan if the ban limits competition. Hargan said that HHS has to enforce the law but prohibiting any entrant into the health care marketplace limits competition and ensures there are not as many hospitals or places for patients to go. Johnson asked if specialty hospitals offer better quality care and Hargan responded that surveys have shown that specialty hospitals have good results. Johnson closed his questions by asking if Hargan would commit to working with Congress to address the ban and Hargan responded that the Department stands ready to provide any technical assistance that the Committee needs.

Following Johnson’s questions, Ranking Member Levin noted that the physician owned hospital issue has been controversial and said the ban was put in place because of major abuses.

Rep. Nunes (R-CA) asked about what changes are needed to Stark. Hargan responded that while Medicare fee-for-service is still part of the landscape and that Stark works on that side, Stark is in many cases standing in the way of the transition to value based care. He said it prevents innovative and coordinated care models.

Rep. Buchanan (R-FL) asked about the differences between Stark and anti-kickback laws. Hargan said the laws are regulated by different parts of HHS, one is criminal and the other is civil, Stark has CMS exceptions while there are safe harbors under anti-kickback laws. He said they are worded in different ways and have not been coordinated over time, which leads to situations where the provider community cannot understand how the two systems are operating so differently.

Buchanan also noted that there is a lot of health care consolidation happening in his district and Hargan said that consolidation is being driven by consideration of the Stark law.

Reps Kelly (R-PA) and Paulsen (R-MN) noted that the Ways and Means Committee has been working on a Reducing Medicare Red Tape Initiative. Hargan said the Administration is committed to putting “patients over paperwork” and trying to reform regulations.

With a few exceptions, Democrats on the Committee largely used their time to question Mr. Hargan about issues unrelated to Stark – questions ranged from the treatment of immigrant children at the border to the Affordable Care Act’s risk adjustment payments. Rep. Kind (D-WI) noted in his comments to Hargan that he introduced a Stark simplification bill with Rep. Marchant (R-TX) and said that he believed that if former Congressman Pete Stark was in the room, he would admit that the law needs to be updated, but said it needs to be done carefully.

Rep. Marchant also noted the legislation in his questions to Hargan and said that the Stark law need to stay in place for private practices. He said that no one on “his side of the aisle” believes the anti-kick back laws should be removed.

Second Panel

Questions to the second panel were brief and limited to 3 minutes as the Committee was rushed to adjourn before House votes. Of the witnesses, 3 of the 4 had been invited by the majority and testified in favor of reforming the Stark law.

Ms. Sylvia, who testified on behalf of the Taxpayers Against Fraud Education Fund, was the minority’s witness and urged caution against changing the law. She stated, “We submit that Stark is not an impediment to the ability of the Medicare program to successfully move to a system that rewards higher value, coordinated care. The move to value-based and coordinated care does not eliminate the fundamental concern at the core of Stark – limiting the role that profit plays in healthcare decisions affecting individual patients and subsidized in large part by the taxpayers.”

Ranking Member Roskam noted that Ms. Sylvia was the sole dissenting voice and said that he heard what she was saying and felt like there was “good work we can do.” Ranking Member Levin said he was disappointed that so much of the Committee’s time had been previously dedicated to other matters such as repeal and replace of ACA and that the Committee was just now addressing this issue so late in the year. He said that Stark reform is an example of where Members should sit down and exchange ideas.

No further actions were announced at the hearing. As referenced above, the Committee has been working on their Reducing Medicare Red Tape Initiative and had previously said they wanted to move a bill before the August break, which may be ambitious at this point.