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Altering Doctor Self-Referral Rule on Medicare Agency Agenda (Corrected)

The Medicare and Medicaid agency hopes to address barriers to coordination and value-based care caused by a self-referral law by the end of the year, according to the agency's administrator, Seema Verma.

The agency is focusing on moving toward value-based care, and to do that it needs to ''foster more coordination,'' Verma, the head of the Centers for Medicare & Medicaid Services, said July 12. The physician self-referral law, also called the Stark law, is a barrier ''within the system'' to moving toward value-based care.

Recently, the agency released a request for information in late June asking for public comments on reducing the regulatory burden of the law. Comments are due Aug. 24.

Verma noted that the CMS requested comments from health-care providers in their payment rules last year about burdensome regulation. Speaking at an Alliance for Health Policy event, Verma said the agency received feedback that the Stark law was a ''major barrier.''

Problems With Stark The Stark law, first enacted in 1989, prevents physicians from referring patients to medical facilities where they or their immediate family members have financial interests. Penalties for violating the law can include $15,000 for each medical service and three times the amount of Medicare payments received for services.

Accountable care organizations and other alternative payment models ''inherently have a financial relationship, and those relationships are complicated,'' Anders Gilberg, senior vice president of government affairs at the Medical Group Management Association, told Bloomberg Law July 12. The Stark law is ''contrary'' to value-based care.

Gilberg said part of the problem with the Stark law is that it may mean providers are ''not willing to get into alternative payment models because there's legal jeopardy.''

One way the CMS could fix that problem is that it could ''provide blanket relief or exemptions from the Stark law'' for providers who want to be in alternative payment models, Gilberg said. Gilberg is a member of the Bloomberg Law advisory board.

At a recent event, the health and human services secretary also noted problems with the law in the current health-care environment. The Stark law ''made sense in an era of fee-for-service medicine. But today, it gets in the way of physicians' coordinating care for their patients,'' HHS Secretary Alex Azar said a conference July 9. ''The unintended consequence of the Stark Law, today, is that large health systems can coordinate care, while independent providers cannot.''

Stark law reform has come up at all four roundtables the House Ways and Means Health Subcommittee has hosted this year, according to a June 20 statement from the committee's chairman, Rep. Kevin Brady (R-Texas).

The ''conflicting and confusing elements of the Stark law'' were enacted when the focus was on fee-for-service payment, Gilberg said. ''Now that it's evolved . . . CMS's implementation of the Stark law needs to account for that.''

Medicaid Waivers Verma also discussed Medicaid policy at the July 12 event. She said her agency will have a response to pending Medicaid waiver requests ''very shortly.''

Some states have asked the CMS to waive Medicaid rules to allow them to impose work requirements for some Medicaid beneficiaries. Kentucky's approved waiver, however, has been blocked by a federal court.

When asked about the impact of the Kentucky Medicaid court ruling, Verma said the CMS is ''looking at what we need to do to address the court's concerns, but it doesn't change our commitment to giving states flexibility and our commitment to helping people rise out of poverty.''

Navigators Program Verma also discussed the CMS's decision, announced July 10, to decrease the grant funds for the Affordable Care Act navigators program this fall by $26 million, to $10 million.

The navigators help consumers find a health insurance plan. But Verma said the program, which signed up less than 1 percent of total enrollees last year, was really costly. Verma said the CMS wants to run a cost-effective system to enroll people in the ACA marketplace, and that it's ''looking at other ways to achieve the same results.''

Verma said her agency is looking to model the navigators program after the State Health Insurance Assistance Program (SHIP), which provides information and counseling to Medicare beneficiaries about their health benefits and choices. However, the Trump administration's fiscal year 2019 budget proposed eliminating SHIP.

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