

# **Referrals**

## **Are You Violating the STARK Referral Statute?**

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Dentists should be particularly aware of one of the most important federal laws prohibiting so-called "self-referral" practices, or the making of or acceptance of referrals from other medical providers who receive payments from Medicare, Medicaid or insurance plans, the STARK legislation. Considering the high civil and possibly criminal penalties for violating STARK the details of when referrals fall within the prohibited categories (or fit the law's exceptions) is something a dental provider must consider on a day to day basis.

With STARK, dental providers are prohibited from referring a patient who qualifies for a Medicare or Medicaid program to an entity for designated health services (DHS) if the provider or an immediate family member has an indirect financial interest in the entity. Under STARK, a dentist may not refer patients for a variety of services (and supplies included as part of those services) labeled DHS including radiology, radiation therapy, imaging, clinical lab services, prosthetics and prosthetic devices, outpatient prescription drugs, inpatient and outpatient hospital services, and home health services. Proof of intent to violate the statute is not required to impose civil fines of \$15,000 per referral.

The type of connection the dentist, or a member of his or her immediate family (which includes children, siblings, parents, grandparents and the spouses of those relatives) has with the entity to which the referral is made has to do with what type of financial interest is present. An ownership interest, an investment interest, a compensation agreement or arrangement such as an employment relationship, independent contractor agreement, or lease are the standard financial interests that cannot tie referral providers. In these cases, exceptions for group practices are important for dentists to know about, for if separate provider numbers are used for dentists within a group practice, it no longer applies for an exception for referrals within the group. The "group" must be a legally recognized entity such as a partnership, professional corporation, foundation, nonprofit corporation, LLC, or similar business relationship. A sole proprietorship with employees is not considered a group. The unified business entity that qualifies for the group exception to STARK must have 1) centralized decision making authority 2) consolidated billing, accounting and financial reporting and 3) centralized utilization review. Only one tax ID number can be used for the group. Dentists qualifying as a group must as an average devote 75% of their time to group practice.

STARK is meant to prohibit physicians from being rewarded for making referrals, but there are provisions so that profit sharing within the group can take place based on productivity and services rendered which are profitable for the entire practice. These exceptions are commonly known as "in-office ancillary services." A distinction which shows that this may take place is when a dentist orders x-rays according to his or her interpretation of the medical condition, he or she may get productivity credit from the overall profits which come from overall technical component revenues. However, if the dentist refers the patient to an oral surgeon to get x-rays or other imaging services done, then there can be no sharing of the revenues according to the production because it is the oral surgeon interprets the results of the services.

The location of the service provided is often a question when STARK legalities are weighed. For instance, when a multi-location group practice opens a separate office specifically devoted to lab services or imaging, then referrals to that office are still considered part of the in-office ancillary services as long as it is part of one centralized business.

Ties to providers who render necessary services like imaging or clinical lab work can be a valuable source of income as well as a great convenience to patients, but STARK is very restrictive, and it must be obeyed to avoid severe consequences.