



Issue: Self-referral and the In-Office Ancillary Services Exception

CAP Position: The CAP supports closing the loophole protecting physicians who refer anatomic pathology (AP) services to laboratories in which they have an ownership or financial interest. The Stark Law's In-Office Ancillary Services (IOAS) exception was implemented to provide patients the opportunity to receive certain medical tests or services that inform treatment and diagnosis at the time of their physician office visit such as a simple blood test or urinalysis. However, AP services are rarely ever done at the time of an office visit. This exception opens the door for physicians to over-order and utilize AP services to maximize their profits with no benefit to patients.

Legislative Ask: The CAP is calling on members of Congress to remove AP and other specific designated health services from the IOAS exception.

Status: In 2017, the administration's budget called for the removal of AP, radiation oncology, advanced imaging, and physical therapy services from the IOAS exception. The Office of Management and Budget estimated Medicare savings from closing the IOAS exception at \$4.9 billion over 10 years. The Congressional Budget Office estimated the savings at \$3.3 billion over 10 years. The Government Accountability Office (GAO) study estimated the removal of AP services would save nearly \$70 million in 2010 alone.

Last year, the CAP supported H.R. 5088, the "Promoting Integrity in Medicare Act," introduced in the House of Representatives by Rep. Jackie Speier (D-CA). The bill removed AP and other designated health services from the IOAS exception to the Stark law.

Background: A steady flow of evidence shows that the IOAS exception leads to overutilization of services and increased costs to the Medicare program with no benefit to patients. In 2013, the GAO published a report examining the impact that self-referral arrangements had on AP services in the Medicare program. The report determined that self-referring providers in 2010 made an estimated 918,000 more referrals for AP services than if they were not self-referring. According to the GAO, "this increase raises concerns, in part because biopsy procedures, although generally safe, can result in serious complications for Medicare beneficiaries." The GAO also found that providers it referred to as "switchers," who did not self-refer in 2007, but began to self-refer in 2010, increased the number of AP referrals by as much as 58%. The GAO has released reports on AP, radiation therapy, advanced imaging, and physical therapy that consistently show the trend of self-referring arrangements leading to increased utilization and costs to the Medicare program for these services.

The GAO's findings were also consistent with a study published in April 2012 by Dr. Jean Mitchell, economist and professor at the Georgetown University Public Policy Institute. The study showed that self-referring urologists billed Medicare for 72% more prostate biopsy specimens compared to non-self-referring physicians, with a 40% lower cancer detection rate than those who did not self-refer, despite billing for nearly twice as many specimens. In October 2013, the *New England Journal of Medicine* published a study by Dr. Mitchell, "Urologists' Use of Intensity Modulated Radiation Therapy for Prostate Cancer," that further demonstrates how self-referral arrangements currently offered under the IOAS exception to the Stark Law cost the Medicare system billions of dollars without benefitting patients.

The CAP is part of the Alliance for Integrity in Medicare—a broad coalition of physical therapy, laboratory, radiation oncology, medical imaging, and anatomic pathology groups committed to ending the practice of inappropriate physician self-referral.

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