Wynee E. Hawk, RN, JD
Policy and Legislation

Timeline

- 1989 — "Stark I" part of Omnibus Budget Reconciliation Act; only applied to clinical laboratory services and Medicare
- 1993 — Maryland Patient Referral Law (MPRL) enacted
- 1994 — "Stark II" (42 USC 1395nn) extended to cover additional "designated services" and to apply to Medicaid. The federal statute is narrower than Maryland, because it (1) only applies to physicians; and (2) covers only self-referrals of certain designated services
- 2006 — Board issued DR 2006-1, interpreting the MPRL for the first time; in the DR, the Board interpreted the exceptions very narrowly
- 2011 — Maryland Court of Appeals upholds DR 2006-1 (*Potomac Valley*)

Maryland's Patient Referral Law (MPRL)

Md. Health Occupations Article, §1-302

- Enacted in 1993
- Prohibits a health care practitioner from referring a patient to a health care entity in which the practitioner (or an immediate family member) owns a "beneficial interest" or has a "compensation arrangement." Md. Health Occ. Code Ann. §1-302
- MPRL was patterned after federal Stark Law, and was designed to curb potentially inappropriate utilization of medical tests and services
- "Because the general rule is so broad and sweeping, numerous exceptions had to be made accommodate situations in which there is no significant threat of overutilization." Potomac Valley Orthopaedic Assocs. V. Md. Bd. Of Physicians, 12 A.3d 84, 88 (Md. 2011) (quoting DR 2006-1 at 13-14).

MPRL Does Not Apply

- Where there is no **"beneficial interest"** or **"compensation arrangement"** between the referring physician and the health care entity
  - "Beneficial interest" is defined as "ownership through equity, debt, or other means, of any financial interest." HO §1-301(b)
  - "Compensation arrangement" means "any agreement or system involving any remuneration between a health care practitioner … and a health care entity" but not including "[a]mounts paid under a bona fide employment agreement [.]" HO §1-301(c).

- Where the **referral comes within a specific exception**, such as:
  - "Group practice" exception (HO §1-302 (d) (2))
  - "Direct supervision" exception (HO §1-302 (d)(3))
  - "In-office ancillary services" exception (HO §1-302 (d) (4))

Declaratory Ruling 2006-1

- The Board was petitioned to decide whether the "group practice" and "direct supervision" exceptions permitted physicians ***who had an ownership interest*** in their group practice to refer patients for in-office MRI and CT scans.
- Seven example cases were reviewed by the Board, all in which the referring physician had an ownership interest in the entity furnishing the MRI or CT scan. Also examined was a fact pattern ("Variation 3") in which the referring physician was *not* an owner but rather an employee of the practice that furnished the scan.
- The Board's conclusions were based on its interpretation of the definitions in HO §1-301 and the exceptions in §1-302, The Board construed the exceptions very narrowly.

PHYSICIAN-EMPLOYEE	PHYSICIAN-EMPLOYEE
Board concluded that a physician-owner could not use either the "group practice" or "direct supervision" exceptions to make an in-office referral for MRI/CT scans.	Board concluded that a physician-employee could permissibly refer for an in-office MRI/CT scan in certain circumstances without needing to rely on any exception listed in HO § 1-302 (d)

- DR 2006-1 was adopted and affirmed by the Maryland Court of Appeals in Potomac Valley.

Questions?