Maryland’s Self Referral Law: Policy Options

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Spectrum of Solutions

- **No Change to Self-Referral Law**
- **Modify CON/self-referral law to include imaging & other advanced technologies**
- **Require practices to meet criteria on quality and new payment models (MHCC Proposal)**
- **Align self-referral law with Federal Stark Law**

**No Action**
- Modify existing exemption process
- Modify CON

**Create a pilot program:**
- Modify Health Incentive Statute
- Modify CIO statute

**Waiver from self-referral if VBP and quality criteria met**

**Repeal law and expand Federal Stark to private market**
Options Available through Existing Regulatory Framework

• Option 1: Clarify Application of Maryland Patient Referral Law to Distributions from Value-Based Models, including Shared Savings Programs, Gainsharing, and Clinically Integrated Networks.
  
  • Seek individual guidance from respective licensing board to clarify application of law in cases where payment reform methods are going to be tested.
Options Available through Existing Regulatory Framework

• Option 2 – Adjust Exemption Process

• Lengthen Exemptions Available through Current Process
  • Current exemption linked to license renewal, in most cases 2-years.
  • 2 year timeframe is too short to justify investment in equipment, particularly large capital investments.
  • Option can be accomplished through regulatory change

• Expand MPRL exemption process to further define and test MHCC “value-based” criteria.
Options Which May Require Legislative Change

• Option 3: Permit Pilot Tests of Self-Referral Arrangements

• Selection of pilot practices could be based on;
  • Practices that address known access and need concerns;
  • Practices that appropriately integrate services delivered by hospitals and physicians, and/or;
  • Practices that can demonstrate significant scale.

• Pilot practices should be required to report on quality/performance.

• During this period, monitor federal government policy and implementation of phase 2 of the waiver.
Option 4: Allow Referrals Authorized by Financially Responsible Party

• Amend statute so that self-referral prohibitions will not apply where payor has authorized the provider to self-refer.

• Authorization from payor could be across-the-board, or case by case.
Option 5: Allow Referrals Authorized Under Value-Based Models

• Amend the statue so self-referral prohibitions will not apply in cases where;
  • The patient is covered by a recognized value-based model;
  • The organization holding the contract is financially responsible to absorb at least 50% of costs in excess of a specified target; or,
  • The organization holding the contract has authorized the physician to self-refer.

• Value-based arrangements could include Shared Savings Program, Gainsharing, Accountable Care Organizations, and Clinically Integrated Networks
Option 6: Amend the Maryland Physician Referral Law by adding an Exemption that any arrangement permitted under Stark is permitted, unless prohibited in the MPRL.

- Amend MPRL to outline specific exemptions in Stark that would be prohibited in Maryland.
Options with less consensus among stakeholders

• Option 7: Leave current Maryland Patient Referral Law unchanged

• Option 8: Add an exemption to the Maryland Patient Referral Law making any arrangement permitted in Stark are also permitted in Maryland

• Option 9: Repeal the current Maryland Patient Referral Law