AIM

ALLIANCE FOR INTEGRITY IN MEDICARE

Closing the Self-Referral Loophole and Preserving Medicare Integrity

PARTNERS IN THE COALITION

American Clinical Laboratory Association

ACR American College of Radiology

APTA American Physical Therapy Association

AQI Association for Quality Imaging

ASTRO

American Society for Clinical Pathology

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July 20, 2012

The Honorable Andrew M. Cuomo
Governor of New York State
NYS State Capitol Building
Albany, NY 12224

RE: Assembly Bill 3551-A/Senate Bill 4660

Dear Governor Cuomo:

The Alliance for Integrity in Medicare (AIM), a coalition of organizations committed to ending inappropriate physician self-referral, respectfully requests your veto of AB3551-A/SB4660. This legislation would undermine the New York State Public Health Law pertaining to the self-referral of physician services by relying on a weak federal law prohibiting physician self-referral arrangements. The undersigned organizations, representing thousands of New York-based health care providers in the fields of advanced diagnostic imaging, radiation oncology, anatomic pathology, and physical therapy, are extremely concerned that if AB 3551A/SB 4660 becomes law, it could lead to the widespread adoption of physician self-referral arrangements that can result in significant overutilization of medical services and increased costs.

If signed into law, AB 3551/SB 4660 will: 1) reverse longstanding New York law prohibiting physicians from referring patients to health care providers in which the referring physician has a financial interest; 2) dismantle fundamental patient and third party payer protections against medical billing abuses that inflate the cost of care; and 3) may lead to improper medical decision-making.

When Governor Mario Cuomo signed into law the existing statutory provisions prohibiting physicians from referring patients to health care providers for services in which the referring provider has a financial interest (Chapter 803), he noted in his signing statement that "over the past few years, there has been increasing recognition of the conflict of interest that exists in physician self-referrals." His statement noted that "this can increase the cost of health care, lead to unnecessary utilization, foreclose competition and compromise the quality of care." Chapter 803 sought to extend protections to Medicaid, insured and private paying patients similar to those protections federal law was intended to provide to Medicare beneficiaries.

Unfortunately, the federal Ethics in Patient Referrals Act, commonly known as the Stark law, is an ineffective deterrent against inappropriate physician self-referral arrangements. The statute generally prohibits physicians from referring Medicare patients for "designated health services" (DHS) such as advanced diagnostic imaging services, anatomic pathology services, physical therapy, and radiation oncology services, to entities in which they have a financial interest. While the law seeks to ensure that medical decisions are made in the best interest of the patient and without consideration of any financial gains that could be realized by the treating physician through self-referral, misapplication of the statute's in-office ancillary services (IOAS) exception leads to wasteful spending and unnecessary overutilization of services, and compromised patient choice and care. Widespread abuse of the IOAS exception has substantially diluted the Stark law and its policy objectives, making it simple for physicians to avoid the law's prohibitions.

Evidence shows that physician self-referral invariably leads to increased utilization of ancillary services that may not be medically necessary, poses a potential risk of harm to patients, and costs the healthcare system millions of dollars each year. The Medicare Payment Advisory Committee's (MedPAC) June 2010 Report to Congress discusses how physician self-referral of services under the IOAS exception creates incentives for those physicians to increase their volume of procedures. MedPAC's findings that the vast majority of advanced diagnostic imaging, anatomic pathology, physical therapy, and radiation oncology services are not provided on the same day as the initial physician office visit directly contradicts arguments that self-referral arrangements enhance "patient convenience."

Despite evidence of abuse, MedPAC ultimately elected not to provide any formal recommendation to Congress or the Centers for Medicare and Medicaid Services (CMS) to close the IOAS exception. Instead, MedPAC has recommended a variety of cuts in federal reimbursement which unfairly target referral-based physicians, like those that comprise the AIM coalition, and fail to adequately address the IOAS loophole. Failure to veto this flawed bill will leave crucial decisions pertaining to self-referral abuses in New York State within the hands of the federal government which, unfortunately, has repeatedly shown to be woefully unresponsive to blatant violations of the spirit of the Stark law.

One of the most recent studies on this issue, published in the April 2012 issue of Health Affairs found that urologists involved in self-referral arrangements bill Medicare for 72% more specimen evaluations for patients with suspected prostate cancer than urologists who send specimens to independent providers of pathology services. Despite the increased billing, the study found that self-referring urologists detect cancer at a much lower rate, 12 percentage points lower, than urologists who do not self-refer. Also, the Wall Street Journal investigated several urology group practices, including one of the largest, Integrated Medical Professional (IMP) of Melville, NY, that have purchased external beam radiation therapy services for their offices through the self-referral exception. The investigation found that these urology groups had utilization rates significantly above the national average for the treatment of prostate cancer, particularly for men over the age of 80 with low-risk prostate cancer. Experts have found that in most cases, 80+ year-old men with low risk-prostate cancer do not need treatment. In 2009, a MedPAC study on imaging procedures documented that patients were up to 2.3 times more likely to receive at least one imaging test than patients treated by physicians who did not self-refer.

Additionally, the U.S. Government Accountability Office (GAO), the U.S. Department of Health and Human Services Office of Inspector General, and a host of other sources have shown compelling evidence that physician self-referral increases utilization and health care costs. It should be noted that the GAO is currently working on a series of reports on the clinical and economic impact of physician self-referral arrangements affecting advanced imaging, radiation therapy, and anatomic pathology services reimbursed under the Medicare program. Their findings are expected to be released by spring 2013.

We believe that the existing New York prohibition of physician self-referral, which exceeds that provided under federal law, provides critical protections against abusive business practices that demonstrates the state's commitment to protect patients from the overutilization of medical services and increased health care costs. Quality, affordable health care and access to services are best maintained through the current patient-referral law. Should you have any questions, please contact Dave Adler, Director of Government Relations, the American Society for Radiation Oncology at (703) 839-7362.

Sincerely,

The Alliance for Integrity in Medicare

American Clinical Laboratory Association
American College of Radiology
American Physical Therapy Association
American Society for Clinical Pathology
American Society for Radiation Oncology
Association for Quality Imaging
College of American Pathologists
Radiology Business Management Association