

Legal (Fraud and Abuse) Barriers to Care Transformation and How to Address Them

Executive Summary

The American Hospital Association's (AHA) report, *Legal (Fraud and Abuse) Barriers to Care Transformation and How to Address Them*, to Congress and the Administration examines the barriers erected by outdated fraud and abuse laws to transforming health care delivery.

When Congress enacted the Medicare Access and CHIP Reauthorization Act (MACRA) in 2015, it eliminated a single fraud and abuse barrier to care but called for legislative recommendations to tackle those remaining. The AHA's report answers that call with a comprehensive analysis of the fraud and abuse laws and regulations that stand in the way of the teamwork among hospitals and medical professionals essential to transforming the way in which health care is delivered to our communities. It recommends enactment of comprehensive safe harbors to remove outdated barriers and replace them with measures to foster teamwork and ensure accountability.

The report tackles seven major barriers created by the Stark and Anti-Kickback Laws and/or regulations that our members told us affect them every day. Specifically the report examines how those laws impede:

- 1. Sharing electronic health records to coordinate care.**
- 2. Aligning incentives to redesign care and improve outcomes.**
- 3. Providing incentives to employ more efficient and effective treatment options.**
- 4. Rewarding a team-based approach that includes non-physician practitioners.**
- 5. Collaborative arrangements to coordinate care when the patient leaves the hospital.**
- 6. Assisting a patient with discharge planning.**
- 7. Providing assistance to patients to maintain their health when they return home.**

In addition to an in-depth legal examination, the report focuses on the practical ways these laws adversely impact patient care. It follows "Wayne," a hypothetical, yet typical, 75-year-old patient with multiple chronic conditions, as he is cared for by his hospitals, doctors and other caregivers involved in a continuum of care. His path vividly illustrates just how many unnecessary and harmful roadblocks these outdated laws put in the way of more coordinated care that achieves better results for the millions of patients like Wayne.

The report recommends workable legislative solutions to achieve the objective of better, more coordinated care, including:

- Creating a "safe harbor" under the Anti-Kickback Law to foster and protect incentive and shared savings programs involving hospitals, physicians and other providers.
- Refocusing the Stark Law on its original purpose – physician ownership, and regulating compensation arrangements exclusively under the Anti-Kickback Law.
- Creating a "safe harbor" under the Anti-Kickback Law to foster and protect hospitals providing the type of assistance patients need for a successful recovery and to maintain their health in the community.