



## Fact Sheet

### H.R.3987

To amend titles XI and XVIII of the Social Security Act to promote the use of health information technology to better coordinate health care

#### **Current Law**

Enacted in 1972, the anti-kickback statute makes it illegal for providers to knowingly and willfully accept remuneration or bribes in order to generate revenue from federal health programs (i.e. Medicare and Medicaid). The statute has been revised to allow for more than 20 “safe harbors,” and H.R. 3987 would place benefits gained from health information technology (IT) within that group.

The Stark law is a civil statute enacted in 1989, which outlaws physician referrals of a patient within a federal health program to an entity (laboratories, testing centers, etc.) in which the physician has a vested interest, such as ownership or a compensation arrangement. H.R. 3987 would ensure that remuneration in the form of health IT under certain conditions would be exempt from this law.

#### **Overview of H.R. 3987**

H.R. 3987, to amend titles XI and XVIII of the Social Security Act to promote the use of health IT to better coordinate healthcare, was introduced by U.S. Representative Roy Blunt (R-MO) on November 3, 2009 and is co-sponsored by Joe Barton (R-TX), Marsha Blackburn (R-TN), Michael Burgess (R-TX), and Phil Gingrey (R-GA). As of February 2010, the legislation resides within the House Ways and Means Committee. This legislation helps promote the use of health IT by creating safe harbors within current anti-kickback and physician referral laws (under Stark).

**Section 1** of the legislation provides protection from civil and criminal penalties. In reference to civil penalties, inducements to reduce or limit services will not apply to the benefits gained from health IT. In reference to criminal penalties, remuneration is made for the primary purpose of better coordination of care or improvement of health quality, efficiency, or research. Specifically, the language provides safe harbors for the remuneration in the form of health IT or related installation/maintenance from an entity as long as such technology is:

- 1) not limited to only those individuals receiving services at the specified entity
- 2) permitted to interact with other health IT
- 3) not contingent on the referral of business to the specified entity

This section also commissions a study by the Secretary of Health and Human Services to determine the impact of the exception on financial relationships, health IT adoption, quality of care, access, and cost.

The legislation defines health IT and specified entity as follows:

- Health IT: hardware, software, license, right, intellectual property, equipment, or other information technology (including new versions, upgrades, and connectivity) designed or provided primarily for the electronic creation, maintenance, or exchange of health information to better coordinate care or improve health care quality, efficiency, or research.
- Specified Entity: an entity that is a hospital, group practice, prescription drug plan sponsor, a Medicare Advantage organization, or any other such entity specified by the Secretary, considering the goals and objectives of this section, as well as the goals to better coordinate the delivery of healthcare and to promote the adoption and use of health information technology.

**Section 2** reiterates Section 1 in the context of providing an exception to certain limitations on physician referrals (under Stark) for remuneration in the form of health IT.

**Section 3** ensures that the language allows the formation of a group of healthcare providers, payers, employees, and other interested entities to:

- 1) collectively purchase and donate health information technology or
- 2) offer healthcare providers a choice of health information technology products that account for the varying needs of such providers receiving the products

### **Closing Remarks**

HIMSS will continue to **monitor this piece of legislation** for any changes and movement during the course of the 111<sup>th</sup> Congress. Questions on this fact sheet should be addressed to the HIMSS Government Relations Team at [advocacy@himss.org](mailto:advocacy@himss.org).