HIMSS Fact Sheet: 
Sunset Provisions in the Stark Physician Self-Referral Exceptions and Anti-Kickback Safe Harbors for E-Prescribing and EHR Technology

Background
In August 2006, the Department of Health and Human Services’ (HHS) Centers for Medicare and Medicaid Services (CMS) and the Office of the Inspector General (OIG) issued final rules establishing exceptions to the Stark Physician Self-Referral Regulation (CMS) and safe harbors to the Anti-Kickback Act Regulation (OIG) for electronic prescribing technologies and “pre and post interoperability standard electronic health records.”

The rules implement a provision of the Medicare Modernization Act of 2003 (MMA), and provide a Stark exception and Anti-Kickback safe harbors for E-prescribing and EHR technology, allowing the donation of nonmonetary remuneration (including items and services in the form of software or training services) necessary and used predominately to create, maintain, transmit or receive EHRs. A sunset date of December 31, 2013 was established for the CMS Stark exceptions and the OIG Anti-Kickback safe harbors for E-prescribing and EHRs (EHR Donation Rules).

Status of Sunset Date
In December 2013 CMS and OIG released new final rules extending the sunset date for both the Stark exception and the Anti-Kickback safe harbors to December 31, 2021. This extends the sunset date through the final year of Meaningful Use incentive payments for Medicaid in 2021. The sunset provision is intended to hasten adoption of EHR Technology, while limiting the potential for abuse.

Other Key Changes
The 2013 final rules:

- Exclude laboratory companies from the types of entities that may donate electronic health records items and services;
- Update the provision under which electronic health records software is deemed interoperable;
- Remove the electronic prescribing capability requirement; and
- Clarify the requirement prohibiting any action that limits or restricts the use, compatibility, or interoperability of donated items or services.

For more information, please contact policy@himss.org.

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