

AIM

ALLIANCE FOR INTEGRITY IN MEDICARE

Closing the Self-Referral Loophole and Preserving Medicare Integrity

PARTNERS IN THE COALITION



JOINT STATEMENT FROM THE ALLIANCE FOR INTEGRITY IN MEDICARE (AIM) ON THE GOVERNMENT ACCOUNTABILITY OFFICE (GAO) REPORT ON SELF-REFERRAL LEADING TO OVERUTILIZATION OF PATHOLOGY SERVICES

JULY 16, 2013

The Alliance for Integrity in Medicare (AIM)—a broad coalition of physical therapy, laboratory, radiation oncology, and medical imaging groups committed to ending the practice of inappropriate physician self-referral—applauds the findings of the Government Accountability Office (GAO) released July 15, 2013, *Action Needed to Address Higher Use of Anatomic Pathology Services by Providers Who Self-Refer*. AIM believes these findings add significantly to the existing mountain of evidence that the in-office ancillary services (IOAS) loophole to the federal Ethics in Patient Referrals Act, also known as the self-referral law, results in mistreated patients and billions of wasted Medicare dollars.

The GAO report found that from 2004-2010:

- In 2010, self-referring providers likely referred nearly one million more unnecessary anatomic pathology services than non-self-referring providers, costing Medicare approximately \$69 million.
- Self-referred anatomic pathology services more than doubled, increasing at a faster rate than non-self-referred services (116% vs. 38%).
- Spending for self-referred anatomic pathology services was higher than for non-self-referred services (164% vs. 57%). Dermatology, gastroenterology and urology accounted for 90 percent of referrals for self-referred anatomic pathology services in 2010.
- Referrals for anatomic pathology services by dermatologists, gastroenterologists and urologists substantially increased the year after they “switched” and began to self-refer. In comparison, anatomic pathology referrals for providers who continued to self-refer or never self-referred services during this period increased at a much lower rate.
- The increase in anatomic pathology referrals for switchers was not due to a general increase in use of these services among all providers. Additionally, the findings were consistent after adjusting for differences in geography along with patient health status, age, gender and diagnosis. “Financial incentives for self-referring providers were likely a major factor driving the increase in referrals,” GAO said.

AIM disagrees with GAO’s recommendations for Medicare to track self-referred anatomic pathology services, as well as to create policies to ensure appropriateness of biopsy procedures and to develop new payment approaches. These recommendations do not address the underlying profit incentives associated with this abuse, which continues today and is only possible due to the current regulations and the loophole in the In-Office Ancillary Services (IOAS) exception. AIM believes there is more than enough evidence that self-referral leads to over-utilization, and it’s time to get at the root of the problem and close this self-referral loophole.

Today’s report on pathology self-referral is the second of four reports in GAO’s groundbreaking investigational series examining abuse of the self-referral law’s IOAS exception. In its first report on **advanced imaging services** issued in November 2012, GAO found “providers who self-referred made 400,000 more referrals for advanced imaging services than they would have if they were not self-referring.” These referrals were estimated to be “more than \$100 million” just in 2010. Mirroring the GAO report on anatomic pathology, the advanced imaging report concluded that “financial incentives for self-referring providers were likely a major factor driving the increase in [advanced imaging] referrals.” By September, GAO is expected to release a similar report on self-referral among radiation therapy service providers and will also issue a report on physical therapy self-referral. In these upcoming reports, AIM expects GAO will reach similar findings to those uncovered in advanced imaging and anatomic pathology—adding increased momentum to calls to close the self-referral loophole.

Today's GAO report also confirms independent research published last year in *Health Affairs* on the impact of self-referral of anatomic pathology (AP) services on utilization, patient care and health care costs. The **research**, conducted by Georgetown University health care economist, Jean Mitchell, PhD, compared Medicare billing practices for anatomic pathology services related to prostate biopsies by self-referring and non-self-referring urologists. The report showed that self-referring urologists billed Medicare for 72 percent more prostate biopsy specimens compared to non-self-referring physicians, with no increase in cancer detection. In fact, self-referring urologists had a 40 percent lower cancer detection rate than those who did not self-refer despite billing for nearly twice as many specimens, indicating that self-referring urologists may be performing biopsies on patients who were less likely to have cancer.

The organizations comprising the AIM Coalition remain gravely concerned about the ongoing misapplication of the IOAS exception in the physician self-referral law. We believe this loophole results in increased spending, unnecessary utilization of medical services and potentially compromised patient choice and care, thus eroding the integrity of the Medicare program. The **President's FY 2014 Budget** recommended closing the loophole, which could save the Medicare program more than \$1.8 billion during the standard 10-year budget window, according to the Congressional Budget Office. (The President's budget estimates savings of more than \$6 billion over 10 years.) In addition, several notable bipartisan groups agree with narrowing the exception, including the **Bipartisan Policy Center**, under the leadership of former Senate Majority Leaders Tom Daschle (D-SD) and Bill Frist (R-TN), and the **Moment of Truth Project**, headed by Erskine Bowles and former Senator Alan Simpson.

AIM believes GAO's findings reject the arguments—made by those making excessive profits through self-referral business arrangements—that the exception promotes more convenient, coordinated patient care. Indeed, performing basic, quick turnaround tests and procedures, like drawing blood or performing an X-ray to check for a broken bone, during an office visit often makes sense for patients. Narrowing the exception for in-office ancillary services (IOAS) would not affect a provider's ability to perform such common diagnostic services and clinical laboratory tests. Rather, narrowing the exception would exclude only highly complex services—advanced diagnostic imaging (CT, MRI, PET), anatomic pathology, physical therapy and radiation therapy. These services are not performed while the patient is in the physician's office waiting for a quick turnaround of diagnosis or treatment, as was originally intended by the exception, but rather in follow-up visits.

AIM supports policy change that would limit the use of the exception so that only robust, integrated and truly collaborative multi-specialty group practices could offer these services through the exception. Many integrated group practices would not be affected by this change because they utilize other self-referral law exceptions to refer services within their health system. Likewise, access to care in rural areas would not be limited because existing rural exceptions to the self-referral law would be preserved. AIM is committed to closing the loophole for those practices that are opportunistically abusing the existing exception for profit.

The AIM Coalition remains committed to improving patient care and preserving valuable Medicare resources, and we believe GAO's report further confirms that Congress must act during the 113th Congress to protect patients and reduce costs by removing advanced diagnostic imaging, anatomic pathology, radiation therapy, and physical therapy from the IOAS exception. Reforming this policy will ensure that Medicare patients receive the highest quality and safest health care most appropriate to their needs, and Medicare policy incentives are properly aligned—a positive for beneficiaries, providers and all Americans.

Finally, AIM applauds Senators Max Baucus (D-MT) and Chuck Grassley (R-IA) and Representatives Sandy Levin (D-MI), Henry Waxman (D-CA) and former Rep. Pete Stark (D-CA) for requesting the GAO self-referral reports in a bipartisan manner and for their strong **comments** on July 15, 2013, condemning self-referral abuse.

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