Removing Stark Law Barriers

While conversations with CMS regarding Project Sonar continue, gastroenterologists are seeking to

The key impediment to APMs is that these types of arrangements inevitably link payments to the volume or value of physician referrals. Many of the Stark exceptions require that any compensation involved be calculated in a manner that does not take into account the volume or value of referrals between parties.

As noted in the models described above, physician groups may decide to enter into independent contractor arrangements. Under current Stark regulations, the agreement must satisfy either the Stark "personal services" or "fair market value" safe harbor. Those safe harbors require that compensation must be set in advance, consistent with fair market value and not determined in a manner that takes into account the volume and value of referrals or other business generated by the referring physician. These restrictions impede better management of a physician's referral patterns, utilization of ancillary services, and collaboration with high-quality or cost-efficient partners. As examples, for hospitals to work with medical staff members to improve quality and lower costs for specialty care, a traditional hourly "fair market" fee for work will not capture the complexity of teams of various practitioners working together on quality improvement projects and pathways to address episodes of care. Within APMs, there may be a variety of capitation and subcapitation for specialty case rates, incentive withhold pools, gainsharing or quality bonus payments. These will frequently be tied to volume and require agreements to refer within the "network" of providers within the APM.

Enactment of H.R. 4206 would constitute an important and necessary step to removing barriers to