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Hatch Statement at Finance Hearing on the Stark Law

WASHINGTON – Senate Finance Committee Chairman Orrin Hatch (R-Utah) today delivered the following opening statement at a hearing to examine ways to improve and reform the Stark Law:

As members of the Senate Finance Committee, we have a wide range of duties.

In addition to drafting laws and overseeing their enforcement and implementation, we are also called to assess the impact of existing laws to determine their effectiveness at achieving their intended goals.

When it comes to that last part, there is a quote from a well-known American business leader that applies: "Good intentions often get muddled with very complex execution."

Today we are here to talk about the Stark law, an important yet extremely complicated, health care fraud law that prohibits physician referrals under certain circumstances. This law is the embodiment of good intentions muddled with complex execution.

At its most basic level, the Stark law prohibits doctors from referring Medicare patients to hospitals, labs and other physicians for healthcare services if the referring doctor has any direct or indirect financial relationship with that entity. The sweeping nature of that prohibition makes vast swaths of medicine performed in the current healthcare system potentially illegal.

Anyone caught violating the law must give back all the Medicare reimbursements paid to the doctor, hospital, or lab under the tainted arrangement, even if the violations were unintentional, because the Stark law is a strict liability statute that is indifferent to motive, knowledge, or state of mind.

When the Stark law passed in 1989, lawmakers believed that, given a bright line rule, providers would self-police their arrangements with physicians. Despite this original intent, the Stark law has become increasingly complex and created more and more challenges for

legitimate health care arrangements.

Today, the healthcare world is populated by scores of legal experts who strive to keep up with the sprawling compendium of statutes, regulations, and legal advisories known collectively as the Stark law.

The Federal Register contains hundreds, if not thousands, of pages of regulatory text drafted by the Department of Health and Human Services to improve compliance with and implementation of the Stark Law.

Through these regulations, HHS has come up with more than 30 exceptions to the law, each of which carries its own detailed requirements.

Even the original sponsor and namesake of the legislation, Representative Fortney "Pete" Stark, recently lamented the Byzantine turn that the statute has taken, stating: "It gave every shyster and promoter a loophole… We now have to keep rewriting the laws like the tax code."

Because it regulates physicians' financial relationships, the Stark law has a significant impact on the structure and operation of the healthcare delivery system. Therefore, as we've collectively worked to transition our federal health programs toward more value-based payment systems and away from fee-for-service models, one question keeps coming up: In its current form, is the Stark law still necessary?

Last December, in an effort to answer this question and address long-standing concerns about the Stark law, the Finance and Ways and Means Committees convened a roundtable discussion with stakeholders and legal experts to discuss these issues. All three of the witnesses here today were part of that discussion.

We received feedback on a number of issues related to the Stark law, including: the barriers it places on the implementation of health reform laws; stakeholders frustrations with the difficulty and expense associated with compliance; and the problems created by the Center for Medicare & Medicaid Services' limited authority to create exceptions and to issue advisory opinions.

Following the roundtable, we issued a broader call for comments industry leaders and received almost 50 responses suggesting a variety of changes, including: additional or expanded waivers or exceptions; enhanced authority for CMS to address specific needs on an ongoing basis; and repeal of the compensation arrangement prohibition. In addition, some suggested that we repeal the law in its entirety.

Commenters across the board expressed concern about the ambiguous way certain terms are in defined under the Stark law. Terms like "fair market value," "volume and value of referrals," and "commercial reasonableness" all have a decisive impact on the application of the

law, yet they are not clearly defined. And, finally, virtually everyone we heard from believed that technical violations (of form rather than substance) of the law should be subject to separate sanctions and limited liability.

If the aim of the Stark Law is to prevent physicians from inappropriately referring patients for medically unnecessary treatments, it does so in a rather roundabout way, at least under the current structure.

If we really want to prevent inappropriate self-referrals and address the culture of overutilization, we have to do more than target specific relationships and practices prone to abuse. We must also realign the financial incentives created by our current payment mechanisms.

If, as some have claimed, the Stark law is impeding the implementation of recently passed health reforms like the Medicare Access and CHIP Reauthorization Act and preventing better integration in the delivery of medical treatment, we should address that as well.

As a committee, we have a responsibility to explore potential changes to make the law more workable in terms of enforcement and compliance in both fee-for-service and value-based payment models, as both are likely to be around for years to come

We're here today to examine these issues and, hopefully, hear some potential answers to the questions that have come up. I look forward to hearing the testimony of our witnesses and getting their input on all of these important issues.

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