Independent Physicians Successfully Lead Effort to Modernize NJ Self-Referral Laws

For the past several years, the federal government has shifted its position toward allowing physicians to legally engage in self-referrals if they are participating in an alternative payment model. This movement began in 2011 when the Centers for Medicare & Medicaid Services was authorized to waive the federal Stark self-referral law for participation in Medicare Shared Savings Programs.

"With the advent of the Affordable Care Act, the federal government has set its sights on moving towards a different payment model for physicians," says Robert Gialanella, MD, president and chief executive officer of New Jersey's Allied Digestive Health, an independent, integrated practice. "By 2018, it wanted 50% of Medicare payments to be in a non-fee-for-service environment. This would be accomplished through the creation of and participation in new value-based alternative payment models that mandate the sharing of information and manpower between independent entities."

"This may sound great for physicians interested in engaging in value-based alternative payment models, but for physicians in New Jersey, there was just one rather significant barrier: The state is one of several in the United States with very strict self-referral laws," Dr. Gialanella says.

When independent gastroenterologists in New Jersey found conflicts between the Stark law and New Jersey's self-referral law (the "Codey Law") that had the potential to harm patient care and practice viability, they took action.

In the summer of 2016, Dr. Gialanella says he became very involved with the New Jersey Patient Care and Access Coalition (NJPCAC), which promotes and represents the interests of physicians in the state. Along with NJPCAC's lawyer and lobbyist, Dr. Gialanella met with Sen. Richard Codey (D-Essex), for whom the Codey Law is named, members of the New Jersey Legislature, and the chairman of the state's department of health to propose legislation to modify the Codey Law.

"We hoped to modernize the law," Dr. Gialanella says. "We wanted to exempt physicians in New Jersey from self-referral laws if we engaged in alternative payment models."

These efforts were backed by the Digestive Health Physicians Association (DHPA), a national trade association which advocates on behalf of independent gastroenterological practices.

"It is very powerful to have a national organization of like-minded physicians come together to support initiatives," says Charles Accurso, MD, from Digestive Healthcare Center in Hillsborough, N.J. "The organization is a valuable addition in the armamentarium to help private practice gastroenterologists lobby for better patient care and develop consensus on how to provide better care at a lower cost in a value-based environment."

"DHPA provided us with a grant to support our efforts," adds Dr. Gialanella. "They also provided very strong legislative backing. With our team, we engaged legislators directly to explain that we needed them to help us and our patients navigate these challenging times in healthcare."

The message hit home, and the legislation was embraced by members of the New Jersey Legislature. It passed both the senate and assembly unanimously, and was signed into law by the governor on July 13, 2017.

"New Jersey is just the second state in the country to modify its self-referral laws," Dr. Gialanella says. "We've modified them in a very impactful way. They don't only affect government programs like Medicare and Medicaid, but also private payors. Anyone who pays for medicine in the state has to abide by the new laws."

"Physicians are now in a better position to work in value-based care without running afoul of New Jersey's self-referral laws," Dr. Accurso says. "It was a major development as it makes New Jersey one of the first states to revamp and rewrite the law to allow for the new payment systems under MACRA and for value-based contracting."

Changing the law has "opened a whole new era of medicine" for physicians, Dr. Gialanella says. "We can share data analytics and patient navigators with other practices not necessarily part of a single group. As long as the payment model meets the Triple Aim of better patient care, population health management, and lower costs, the department of health will support those alternative payment models and treatment modalities."