

Why GAO Did This Study

GAO has long expressed concern that increases in Medicare spending are unsustainable and do not necessarily enhance health care quality.

Traditional Medicare provider payment systems reward the volume of services instead of the quality or efficiency of care by paying physicians for each service provided. Some health systems, which can be hospitals, physicians, health plans, or a combination, use financial incentive programs to reward physicians for improving quality and efficiency with the goal of better outcomes for patients and savings for hospitals and payers. Federal laws that protect patients and the integrity of federal programs, including Medicare, limit health systems' ability to implement financial incentive programs. These fraud and abuse laws include the physician self-referral law, or Stark law; the anti-kickback statute; and the Civil Monetary Penalties (CMP) law. The Centers for Medicare & Medicaid Services (CMS) and the Office of Inspector General (OIG) within the Department of Health and Human Services (HHS), and the Department of Justice oversee and enforce these laws.

GAO examined how federal fraud and abuse laws affect the implementation of financial incentive programs, stakeholders' perspectives on their ability to implement these programs, and alternative approaches through which HHS has approved implementation of these programs. GAO analyzed relevant laws and agency guidance and documentation; and interviewed agency officials, legal experts, and provider stakeholders.

View [GAO-12-355](#). For more information, contact James Cosgrove at (202) 512-7114 or cosgrovej@gao.gov.

MEDICARE

Implementation of Financial Incentive Programs under Federal Fraud and Abuse Laws

What GAO Found

Certain financial incentive programs are permitted within the framework of federal fraud and abuse laws, but stakeholders GAO spoke with reported that the laws, regulations, and agency guidance have created challenges for program design and implementation. The Stark law and anti-kickback statute, which restrict financial relationships among providers, have statutory and regulatory exceptions and safe harbors, respectively, that permit financial incentive programs that meet specific criteria. However, there are no exceptions or safe harbors specifically for financial incentive programs intended to improve quality and efficiency, and legal experts reported that the constraints of existing exceptions and safe harbors make it difficult to design and implement a comprehensive program for all participating physicians and patient populations. The CMP law prohibits hospitals from paying physicians to reduce or limit services, and OIG has interpreted the law to apply to the reduction or limitation of any services, whether or not those services are medically necessary. The CMP law does not include statutory exceptions to this prohibition, and OIG does not have the authority to create exceptions through regulation. Through its advisory opinion process, OIG, however, has indicated that it would not impose sanctions for specific financial incentive programs that otherwise violated the CMP law but presented a low risk of fraud and abuse. Legal experts stated that innovative arrangements are difficult to structure and that the advisory opinion process is burdensome.

Through alternative approaches, HHS has approved implementation of otherwise prohibited financial incentive programs that incorporate safeguards, under its statutory authority to conduct demonstrations and other initiatives. Specifically, CMS has conducted demonstration projects to test financial incentive programs that reward quality and efficiency. These demonstration projects included safeguards, such as linking payments to quality measures, to protect program and patient integrity. CMS has incorporated safeguards into the Medicare Shared Savings Program, which allows eligible providers to participate as accountable care organizations to share savings with the Medicare program. As specifically authorized for the Medicare Shared Savings Program, CMS and OIG will waive fraud and abuse laws for, among other things, the distribution of shared savings in the Medicare Shared Savings Program, subject to certain requirements. The Center for Medicare and Medicaid Innovation within CMS is also implementing programs to test financial incentives.

GAO's work suggests that stakeholders' concerns may hinder implementation of financial incentive programs to improve quality and efficiency on a broad scale. Stakeholders—government agencies and health care providers—likely will continue to have different perspectives about the optimal balance between innovative approaches to improve quality and lower costs and retaining appropriate patient safeguards. HHS reviewed a draft of this report and in its written comments, clarified its position on CMS's authorities to create exceptions and issue waivers to permit certain financial incentive programs, noting that its authority to issue waivers is broader than its authority to create Stark exceptions. We modified the draft to reflect the Department's position.