

# LAW WATCH

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## CALIFORNIA AMENDS PHYSICIAN SELF-REFERRAL LAW

On August 28, 2002, SB 1907 by Senator Kevin Murray (D-Los Angeles) was signed by Governor Gray Davis, adding a "personal services" exception to California's physician self-referral statute (this statute is commonly referred to either as "PORA," which stands for Physician Ownership and Referral Act, or as the "Speier Act," after its original author, Senator Jackie Speier). The enactment of SB 1907 brings California's law in this area into rough alignment with the federal physician self-referral statute, which applies to referrals of Medicare beneficiaries (commonly referred to as the "Stark Act"), thus helping to reduce the confusion and hardship created when trying to comply with both laws.

Generally, **PORA prohibits physicians from referring patients for certain services** (e.g., clinical laboratory, diagnostic imaging, physical therapy, home infusion therapy, and others) if the physician, or an immediate family member of the physician, has a "financial interest" (defined broadly to include virtually any type of direct or indirect investment interest or compensation arrangement) with the person or entity that receives the referral. Although PORA's prohibitions are subject to a number of exceptions, **until now, there has been no general exception permitting a physician to have a personal services arrangement** (e.g., to serve as a medical director, or to provide professional services to a

### *Executive Summary*

**Action:** *California's physician self-referral statute (which is commonly referred to as "PORA," or the "Speier Act"), now has a **personal services** exception comparable to the one contained in the federal physician self referral statute (which is commonly known as the Stark Act).*

**Impact:** *This new exception protects many standard physician compensation arrangements from PORA's self-referral prohibitions, and will provide welcome relief to numerous physicians and facilities.*

**Effective Date:** *January 1, 2003.*

facility's patients) with a person or entity to whom the physician refers patients for PORA covered services.

For many providers and physicians, this omission in PORA has not been problematic, because there are broad exceptions in PORA that, with relatively few restrictions, permit physicians to refer (1) within or to their own office practices; and (2) to any health

facility, as defined in Health & Safety Code Section 1250 (which includes hospitals and skilled nursing facilities), and facilities owned or leased by them. However, other types of providers, such as **rehabilitation facilities, community clinics, ambulatory surgery centers, clinical laboratories, home health agencies, Medicare certified independent diagnostic testing facilities, etc.**, and the physicians who refer to them, have suffered from the absence of a personal services exception.

For example, although Medicare requires a comprehensive outpatient rehabilitation facility ("CORF") to have a medical director, **there was, until now, no general exception in PORA permitting the medical director to refer his or her patients to that CORF for rehabilitation services, such as physical therapy.** This was true even if the medical director's compensation arrangement satisfied the applicable exception to Stark, because Stark does not preempt California law (i.e., physicians and the entities to which they refer must comply with both federal and state law).

Now, physicians will be permitted to refer patients for PORA-covered services if the "personal services" arrangement meets the following requirements: (1) it is set out in writing and signed by the parties, (2) it specifies all the services to be provided, (3) the services do not exceed those

reasonable and necessary for legitimate business purposes, (4) persons referred by the physician (and, for workers' compensation patients, their employer, attorney and employer's insurer) are informed in writing of the arrangement, including where that person may go to file a complaint, (5) the term of the arrangement is at least one year, (6) compensation is set in advance, does not exceed fair market value, and is not determined in a manner that takes account of referrals or other business generated between the parties (and, for certain services covered under workers' compensation, compensation is subject to the official medical fee schedule promulgated under Labor Code Section 5307.1 or any contract under Labor Code Section 5307.11), and (7) the services to be performed do not include counseling or promoting any activity that violates law.

If you would like a copy of SB 1907, or have questions about it, or self-referral laws generally, please contact **Charles Oppenheim**, **Rob Sevell** or **Larry Conn** in our Los Angeles office, **Bill Abalona** in our Sacramento office, **Mike Scarano** in our San Diego North office, **George Root** or **Mary Norvell** in our San Diego South office, **Jon Lindeke** or **Tom Driscoll** in our San Francisco office, or the member of the firm who normally handles your legal matters.

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