Part B Insider (Multispecialty) Coding Alert

COMPLIANCE: Doomsday Delayed For Many Common Joint Ventures

But your imaging suite could be a money loser now

Good news: You don't have to rethink all of your joint ventures with hospitals and other physician groups--yet.

The **Centers for Medicare & Medicaid Services** (CMS) had proposed sweeping changes to the Stark physician self-referral law in the 2008 fee schedule proposal. The changes would have wiped out most joint ventures by banning -per-click- payments and making doctors into the same entity as their joint ventures. (See The Insider, Vol. 8, No. 22.)

Those proposals aren't dead, but CMS did decide not to deal with them in the final fee-schedule rule. Instead, CMS will issue a separate final regulation addressing those issues, to allow for a more careful and deliberate consideration.

Chances are you-ll be seeing all of those world-shattering rules again in the next year or so, says attorney **Nora Liggett** with **Waller Lansden Dortch & Davis** in Nashville, TN. -I don't see them backing off much from what they proposed.- CMS may grant -limited exemptions- to some services which doctors are less likely to order unnecessarily, such as lithotripsy or cyberknife procedures.

Imaging crackdown: CMS did roar ahead with one major change to your arrangements: You can no longer mark up the professional component of imaging tests that happen outside your office.

In other words, you can't bill Medicare more than you actually pay the physician who provides you with the imaging interpretation and report, unless the doctor is an employee of your practice and comes to your actual office, says **Jean Acevedo** with **Acevedo Consulting** in Delray Beach, FL. Your office is the -medical office space where the physician or other supplier regularly furnishes patient care.-

Also, the Stark Phase III reg-ulations, which came out in Sep-tember, -tweaked- these interpretation deals, making it harder for them to comply with Stark. -It may well be time for most practices who own or lease diagnostic equipment to bill for the technical component of these tests and leave billing of the professional component to the interpreting physicians,- concludes Acevedo.

Common arrangement: Some of Liggett's clients have an -imaging space- on the ground floor of an office building. Several physicians have offices elsewhere in the building and share the imaging space.

Because they-re in the same building as the imaging suite, the arrangement fits into other Stark exemptions for offering -ancillary services- in your office. But whether these deals will be legal under the new rules is unclear.

In a nutshell, Stark currently allows you to pay for imaging services in a -centralized building,- says attorney **William Maruca** with **Fox Rothschild** in Pittsburgh. But now you won't be able to make any profit on these deals. One target of this change is so-called -condo labs,- where many doctors lease testing offices inside a single building.

Unfortunately, the rule is so unclear that knowing when you-re complying with it may be impossible. -I don't believe that CMS could have done a worse job of defining what a -purchased- service is, or when a service is considered to be in a physician's -space,-- says **David Glaser**, an attorney with **Fredrikson & Byron** in Minneapolis.

For example: When CMS says the purchased tests must be in the medical office space where the doctor sees patients, does this mean the same suite or the same room? -Surely they don't expect physicians to be seeing patients in the x-ray room, but that is one way you could interpret the new rule,- Glaser notes.

Bottom line: Some deals that are currently legal under the Stark rules will become -money losers- under this new anti-markup rule, says attorney **Gerald Griffith** with **Jones Day** in Chicago.