

## Part B Insider (Multispecialty) Coding Alert

### Compliance: Get These 3 Compliance Answers Straight From CMS

**Want to know how Medicare views compliance issues? Check out these CMS-issued answers.**

You know your practice isn't committing any deliberate crimes, but you still wonder if any of your actions could make you a prime target for accusations of non-compliance. Because the laws are so complex, it can be difficult to know what they mean. Fortunately, CMS has its own answers in plain English to guide you.

Although these facts are available on CMS's website, they can be difficult to find if you don't spend hours sifting through the many pages of text. We've compiled three of the questions most often asked to the Insider and broke down the answers based on CMS's own statements.

#### 1. What Exactly Are We Prohibited From Doing Under the Physician Self-Referral Law?

You've no doubt heard many references to the self-referral law, but what exactly does it prevent you from doing?

"The physician referral law (section 1877 of the Social Security Act) prohibits a physician from referring patients to an entity for a designated health service (DHS), if the physician or a member of his or her immediate family has a financial relationship with the entity, unless an exception applies," CMS says on its website. "The law also prohibits an entity from presenting a claim to Medicare or to any person or other entity for DHS provided under a prohibited referral."

**For example:** Suppose you are a primary care physician and your wife owns a home health agency. You cannot refer patients to her agency, or you could be subject to penalties under the self-referral law. The assumption is that you might be persuaded to refer more patients for home health than are necessary because you want your wife to get more business.

**Exceptions apply:** There are exceptions to this law, and you can apply for one if you feel you qualify. For instance, in the example above, if your wife owns the only home health agency in a 30-mile radius and your patient is truly homebound and requires these services, you can apply for the exception. To read more about the self-referral law, visit [www.cms.hhs.gov/PhysicianSelfReferral/01\\_overview.asp#TopOfPage](http://www.cms.hhs.gov/PhysicianSelfReferral/01_overview.asp#TopOfPage).

#### 2. Can We Report 99281 When a Patient Presents to the ER and Is Checked by the Nurse But Leaves Before Seeing the Doctor?

Unfortunately, it's a common scenario in an emergency room: A patient presents and the nurse performs a limited evaluation to triage the patient. However, the patient leaves before being evaluated by the physician, so you're stuck providing that nurse's evaluation for free. Or are you? Many practices have started billing the lowest level ER code (99281) for these services to recoup some of the visit's expense.

This, however, is inappropriate. "The limited service provided to such patients is not within a Medicare benefit category because it is not provided incident to a physician's service," CMS says on its website. "Hospital outpatient therapeutic services and supplies (including visits) must be furnished incident to a physician's service and under the order of a physician or other practitioner practicing within the extent of the Act, the Code of Federal Regulations, and State law. Therapeutic services provided by a nurse in response to a standing order do not satisfy this requirement."

Therefore, your ER must unfortunately consider these visits a free service.

#### Question 3: Our Hospital Treated A Wealthy Medicare Patient. We Know He Can Pay But He Refuses. Can Our Hospital Write Off the Deductible and Coinsurance Even Though This Patient Can Afford It?

You've probably heard so much about the fact that physicians can't write off deductibles and coinsurance for Medicare patients that you never considered whether hospitals are permitted to do this. But you might be surprised to find out that hospitals play by different rules.

"If a hospital does not want to collect, but wants to write off the uncollected debt regardless of income level, as 'charity care' or as a 'courtesy allowance,' Medicare rules don't prohibit that, but Medicare will also not reimburse these amounts," CMS says on its website.

In fact, even the OIG has weighed in on this topic, noting that under the Federal anti-kickback statute, "there is an available safe harbor for waivers of Part A deductible and coinsurance amounts without regard to financial need," CMS says. "In addition, hospitals have the ability to provide relief to Medicare beneficiaries who cannot afford to pay their hospital bills by waiving all or part of a Medicare cost-sharing amount, so long as the waiver is not advertised, not routine, and made after there has been a good faith, individualized determination of financial need or failure of reasonable collection efforts."

Despite this, a hospital still can't advertise waivers, because those actually could violate the anti-kickback statute that prevents all entities from offering of inducements to Medicare and Medicaid beneficiaries, CMS adds.