

## Part B Insider (Multispecialty) Coding Alert

### COMPLIANCE: New CMS Proposal Could Force You To Scrap Most Imaging Deals

#### The end result could be to force small physician practices out of business

Medicare isn't just threatening to cut your payments by 9.9 percent next year. It's also considering making many of the most common physician arrangements illegal.

The result could be a scramble to scrap, or drastically revamp, many practices- joint ventures with other physicians or with hospitals, say experts. These changes to the Stark physician self-referral law are in the 2008 physician fee schedule proposed rule, and you have until August 17 to comment.

Here are the sweeping changes the **Centers for Medicare & Medi-caid Services (CMS)** wants to make:

**Markups:** CMS is considering banning any markups for purchased diagnostic tests. In other words, if your physician paid anyone else to perform an imaging scan, you couldn't charge Medicare more than you paid the person who performed the scan.

**Per-click:** CMS is considering banning payments on a -per-click- basis. That means if a group of physicians jointly owned an X-ray machine, they couldn't receive payments based on how much they used the machine. If a physician used the machine 20 percent of the time, the joint venture couldn't give that doctor 20 percent of the revenue.

This means -physicians will no longer be allowed to lease equipment to a hospital and have per-click lease payments generated by referrals from the physicians,- explains attorney **Clay Countryman** with **Kean Miller Hawthorne D-Armond McCowan & Jarman** in Baton Rouge.

- **Under arrangement:** CMS also wants to say that if physicians enter into a joint venture to provide services to a hospital, then the joint venture is the provider of those services, not the hospital. Since physicians can't send patients to any entity they own part of, they wouldn't be able to refer any patients to those joint ventures. These joint ventures would no longer fit into any exemptions to the law, unless they take place in rural areas.

These sorts of joint ventures to provide services to a hospital are known as -under arrangement,- and consultants have been touting them as -the big gaping loophole in Stark law,- says attorney William Maruca with Fox Rothschild in Pittsburgh, PA. Doctors can't invest in a joint venture and refer patients to it--except when it's -under arrangement- to a hospital. But now CMS wants to close that loophole for good.

**Part-timers:** Finally, the rule says any technicians who perform tests for you must be full-time employees -quot; which could prevent you from having technicians work part-time for your practice. Other-wise, the test counts as a -purchased-test, and you can't charge Medicare more than you pay the technician, says **attorney David Glaser** with Fredrikson & Byron in Minneapolis, MN.

#### CMS Spins 180 Degrees

CMS is proposing to ban arrangements -that they explicitly permitted three or four years ago,- complains Glaser. When the proposal came out, he was writing a letter to a client and -came to a screeching halt. I didn't know what to tell them to do.-

The changes, detailed above, will make it much harder for physicians to stay in small and independent practices, Glaser

warns. With physicians- Medicare payments staying stagnant or dropping every year, doctors need to be able to make money on imaging and other ancillary services to stay afloat. But now CMS is making it impossible for small physician groups to join together to provide imaging services.

-You have to be part of a big system, whether it be a big hospital system or a physician system,- Glaser says. -I think [the new rules] will launch a drive toward consolidation.-

**Another possibility:** These changes could drive more physician groups to buy their own used equipment, so they can own the equipment outright and avoid complicated deals, says Maruca. This could increase the number of imaging machines in the hands of physicians, instead of decreasing it, as CMS wants.

**Bottom line:** If CMS's proposed changes become final, you'll have to restructure some deals drastically. But many common arrangements will also become downright impossible, says Glaser.

To comment on the proposal, go to [www.cms.hhs.gov/eRulemaking](http://www.cms.hhs.gov/eRulemaking). For more information on common financial deals that could soon be out of reach to your practice, see -CMS May Put Your Joint Ventures Out of Joint- on the next page.