

Part B Insider (Multispecialty) Coding Alert

COMPLIANCE: Now's The Time To Look Into Your 'Pod Labs' Arrangements

CMS may have evicted you from 'condo' laboratories

In recent years, many urology and dermatology practices have entered into -pod lab- arrangements--and these deals often come with a 10-year lease.

But it may be time to rethink those agreements, say experts. The **Centers for Medicare & Medicaid Services (CMS)** changed the rules for assignment of services in its 2007 proposed physician fee schedule. If the changes become final, your off-site lab could become impossible to keep open.

How it works: According to the **Council of American Pathologists**, a -pod lab,- or -condo lab,- involves a joint venture deal. A third party opens a building with a lot of cubicle laboratories, and each cubicle is assigned exclusively to a different physician office. A single pathologist will rotate among all the cubicles and act as an independent contractor for each doctor's office. The doctor's office pays the third party a management fee and the pathologist a per-slide fee, and then bills Medicare directly and keeps any profit.

In the 2007 fee schedule proposed rule, CMS said it wants to:

- 1) **prevent** physicians from marking up their bills for assigned technical services. In other words, you could only bill Medicare for the amount you paid the pod lab's manager and pathologist. You couldn't collect any profit on the deal.
- 2) **require** physicians billing for the technical component (TC) of lab services to perform the interpretation or professional component (PC) themselves.
- 3) **impose** a minimum size requirement. An off-site lab would have to be at least 350 square feet.

-They've taken all of the loopholes that allowed the pod labs to spring up and closed them off,- says **Bernie Ness** with **BJ Consulting Group** in Toledo, OH. The **HHS Office of Inspector General** had already stated in its work plan that it wanted to target pod labs, notes Ness.

These rules wouldn't make it absolutely impossible to operate a pod lab, but they would make it much, much harder, says attorney **Richard Cooper** with **McDonald Hopkins** in Cleveland, OH. The rules would also make it much less financially viable to operate a pod lab, he adds.

If you wanted to continue to operate a pod lab under these rules, you'd have to employ a pathologist directly and restructure the physical space of your lab, says Cooper. You'd also have to bill Medicare for the pathologist's services without any mark-up.

You could also move all the equipment from your pod lab back into your physical office, employ a pathologist and histologist directly, and operate the lab in your own office, says Ness. You'd have to use the lab only for your own patients, he adds.

Don't panic: If you've signed a 10-year deal to operate a pod lab with a third party, you may still be able to get out of the deal, says Cooper. -If the substance of a contract violates applicable law, the contract itself is unenforceable,- he notes.



Your contract probably includes a clause saying that if the arrangement violates the law, you should meet in good faith with your partner and try to restructure the deal. If you can't do that, then the deal is void, Cooper says.