

Part B Insider (Multispecialty) Coding Alert

COMPLIANCE: Physicians Can Provide DMEPOS-But Only With Personal Touch

Watch out for satellite offices that don't practice medicine

Are you passing up the chance to add to your bottom line? If you're sending out referrals for services such as X-rays, scans or medical equipment, the answer could be yes.

Thanks to last year's changes in the Stark II physician self-referral rule, it's easier than ever to provide so-called "ancillary services," which include tests as well as durable medical equipment, prosthetics, orthotics and supplies (DMEPOS). The **Centers for Medicare & Medicaid Services** clarified a couple of safety zones, according to attorneys:

1. **Physicians can provide DMEPOS personally.** Until last year's "Phase 2" Stark regulations, physicians couldn't provide items of DMEPOS in the office - except for wheelchairs, canes and crutches, which a patient might need to get home. But in the preamble to last year's regulation, CMS said that if a physician provided other DMEPOS items personally, it didn't count as a referral.

In other words, if the physician directly provides the DMEPOS items to a patient, then he or she can argue that "I'm not referring it, I'm doing it," says **Wayne Miller** with the **Compliance Law Group** in Los Angeles.

"As long as the physician is involved in every aspect of the provision of the service," it's not a referral, explains **Neal A. Cooper** with **Hall Render Killian Heath & Lyman** in Indianapolis, IN. This means your staff can't provide the education or fitting of the device.

It used to be that if a physician provided an item of DMEPOS himself, the law regarded it as referring to himself, but CMS removed that concern, adds Cooper. "Physicians are prescribing specific items of DME and only furnishing them in situations where they have the equipment in their hand and hand it to the patient," Cooper explains. But it's difficult for a physician to hand a hospital bed to a patient, he notes.

Patients can benefit from receiving some items of DMEPOS directly from the physician because they can receive better education and have a greater likelihood of using the devices, Cooper points out.

"I've seen this a lot with sleep practices," which provide continuous positive airway pressure (CPAP) devices to patients, notes Miller.

2. **You can use a part-time office for ancillary services.** In other words, you can provide X-rays or other services out of a separate office as long as physicians perform services other than the ancillary services there. CMS provided some rules and guidance about how much physician activity must take place in an office that provides most of your ancillary services, notes Miller. "While the intent was good, it's still a little hard to make practical."

"The main idea of the exception is that you run the practice and the secondary service out of the same place," so a certain amount of non-ancillary physician services need to happen in the satellite office, Miller explains. "If the doctor is simply there to read X-rays, that may not be enough to meet the standards. You have to see patients."

One concern: the satellite office must be part of a medical group that you've created. If the doctors working in a satellite office are independent contractors instead of employees of your practice, then the office may not appear to be

part of your group, warns Miller.