

Part B Insider (Multispecialty) Coding Alert

COMPLIANCE: Prepare Your Front Lines For Applying Ultrasound Rules To PET Scans

Restructuring your payment arrangements could be just around the corner

If the **Centers for Medicare & Medicaid Services** adds diagnostic nuclear medicine and PET scans to the list of services covered by the Stark self-referral law, then you'll have to apply a stricter set of rules to those services, say experts.

Many observers have been expecting CMS to add diagnostic nuclear medicine and PET scans to the Stark list for a while, according to Washington, DC attorney **Kevin McAnaney**. "They basically went back and decided that imaging was imaging," whether it was an ultrasound or a PET scan, he says. McAnaney helped write the Stark regulations when he worked at the **HHS Office of Inspector General**.

But since providers already have been living with those rules for ultrasounds, CT scans, X-rays and other imaging tests, complying with those rules for PET scans and nuclear medicine won't be an impossible task, says McAnaney. The Stark law just adds "certain constraints," he notes.

If CMS' proposal becomes final and you want to continue providing diagnostic nuclear medicine, then you'll have to fit your ventures into a safe harbor, explains **Barbara Grant**, a principal with **Gates, Moore and Company** in Atlanta. The biggest safe harbor is probably the "in-office ancillary services exception," which allows physicians to provide services in their office if they meet certain requirements. (See PBI, Vol. 6, no. 26).

Not only would the nuclear medicine equipment have to be in the office where you treat patients, but the person who interprets the test results would have to be in your office as well, notes attorney **Alice Gosfield** with **Alice Gosfield & Associates** in Philadelphia, PA.

Under the Stark rule, you'd have to provide the services in an office where you also examine patients. And in a group practice, individual physicians couldn't receive payments based on the number of nuclear medicine tests they ordered. Instead, physicians would have to receive an equal share of the profits from nuclear medicine tests. Or they could receive a share based on their proportion of total income, not just income from nuclear medicine.

"If a group already has a nuclear med camera and provides nuclear med services, it's a highly unlikely option that they would refer it out, because the easy alternative is just change your compensation formula," says Grant.

Cardiologists would be among the hardest hit by the change, says Grant. Cardiologists perform a lot of diagnostic nuclear medicine and often have their own equipment. They're in a position to order nuclear medicine tests, so they've invested in being able to provide the tests themselves.

The CMS proposal mentions that the agency might grandfather existing arrangements for diagnostic nuclear medicine, notes McAnaney. "That's basically unnecessary and unwarranted," he insists, advocating that all providers share a single set of rules.