

Part B Insider (Multispecialty) Coding Alert

IMAGING: CMS Delays Imaging Anti-Markup Provision Until 2009

Delay does not apply to some pathology services, however

One of Medicare's most confusing new rules has gone away, allowing practices another year to make sense out of the anti-markup rule's provisions.

Medicare had planned to implement its new rule, which said that you can't bill Medicare more than you pay the physician who provides the imaging interpretation and report, unless the doctor is an employee of your practice and comes to your actual office. The rule was set to go into effect Jan. 1, but CMS pushed the regulation back another year.

-The new anti-markup provisions will not go into effect until Jan. 1, 2009, except with respect to the TC [technical component] of a purchased diagnostic test, and any anatomic pathology diagnostic test furnished in a group practice's centralized building (which does not qualify as a -same building- under the Stark regulations),- says **Linda A. Baumann, Esq.**, of **Arent Fox**.

Despite CMS- good news, some confusion remains about the aspects of the rule that weren't delayed. -I question whether the term -anatomic pathology- is limited just to those codes listed under this heading in the CPT manual,- says **Daniel M. Bernick, Esq., MBA**, of **Health Care Law Associates**. -Presumably, CMS intends to include 88304 and 88305, which are listed under surgical pathology.-

-CMS still has not really answered one of the major questions that led to the delay in implementing the new rules--what happens if an independent contractor technician performs services in space (whether or not the core office) and with equipment provided by a medical group, perhaps only on a time-share basis?- asks **W. Bradley Tully, Esq.**, of **Hooper, Lundy and Bookman**. -After the deferred implementation of the strict office location requirement, the problem here is no longer that the service was not performed in the core office.

-However,- Tully says, -The troubling question that remains is whether this is a -purchased diagnostic service,- since the independent contractor technician is not formally enrolled as a Medicare provider, and therefore cannot give reassignment.-

The issue might not be whether there is an outside supplier, Tully says, but whether the outside supplier (and not the group) has -performed- the service.

-If the tech is considered to have performed the test, the anti-markup rule may limit payment to the technician and make this way of providing services infeasible,- Tully adds. -However, those bad consequences will not follow if the group is considered to have performed the test, with the technician being viewed as providing a labor component.-