

Part B Insider (Multispecialty) Coding Alert

PHYSICIAN OFFICE LABS: POLs' Supervision Puzzle Solved

Tired of playing guessing games when it comes to your physician office lab? CMS has tried to stop the madness by making it easier to determine the level of physician supervision that's required for tests performed in POLs.

The challenge for POLs has been figuring out whether to comply with the supervision requirements in specific Medicare Carriers Manual provisions or with the in-office ancillary testing exception to the Stark law.

Stark prohibits physicians from referring patients to health care organizations in which they have a financial interest or compensation arrangement, unless there's an exception that covers that referral. And Congress did make an exception for in-office ancillary testing, which at first had the same rules on physician supervision as incident-to billing.

Later, the **Centers for Medicare & Medicaid Services** changed its policy, concluding that Medicare had enough rules about supervision. Therefore, to qualify for the Stark exception, a POL need only follow the supervisory requirements that existed elsewhere in the rules.

But that vague statement left a lot of labs in the dark about which physician supervision rules to follow.

Look to the Fee Schedule

The 2003 fee schedule clarifies CMS' supervision policies, including situations where a test is furnished incident to a physician's service and also is set out in its own category in the Social Security Act.

MCM section 2070 sets forth the levels of physician supervision required for furnishing the technical component of diagnostic tests. Those levels are - from least to most - general, direct and personal supervision. Section 2070 also assigns numerical levels to each CPT and HCPCS code in the Medicare physician fee schedule, based on the physician supervision required.

These are the supervision requirements POLs must meet, even if the services are provided incident to a physician's services, attorney **Kirsten Backstrom** tells **PBI**. Don't worry about MCM section 2050, which spells out the supervision requirements for incident-to services.

Backstrom, with **Epstein Becker & Green** in Washington, explains that if a test requires personal physician supervision, it doesn't matter whether the test is done incident to a physician's services. The lab must provide personal supervision. The same goes for tests requiring general and direct supervision.

CMS Isn't Changing Its Tune

Although CMS' statements in the recently-released physician fee schedule are contradictory, Backstrom says there "is no reason to believe [CMS] meant to reverse" what's in the MCM or in a program memo the agency issued in August 2002.

As CMS puts it in the fee schedule, "if a test requires a higher level of physician supervision than direct supervision, then that higher level of supervision must exist even if the test is furnished as an incident to service."