

Part B Insider (Multispecialty) Coding Alert

RADIOLOGY: Imaging Crackdown May Require New Legislation

CMS can intervene, but there's a limit to its powers

It may require legislation to prevent nonradiologists from performing imaging tests such as MR or CT scans, one advocate admits.

The **American College of Radiology** is working with other groups to convince the **Centers for Medicare & Medicaid Services** to tighten up the Stark II self-referral regulations to hinder nonradiologists' billing for imaging, according to **Tom Hoffman**, the ACR's associate general counsel.

But CMS doesn't have the statutory authority to do everything the ACR would like to accomplish, notes Hoffman.

In fact, even the things that CMS has the statutory authority to do, it's unlikely to do, according to attorney **John Knapp** with **Duane Morris** in Philadelphia. For instance, the ACR wants CMS to tighten up the "same building" test that lets physicians order diagnostic imaging if they have an office in the building one day per week.

In the most recent "Phase 2" regulations on Stark II, CMS actually expanded this "same building" test, Knapp notes. "In previous versions of the regulations, the requirements were tighter and there were a lot of criticisms made," he points out. A part from radiologists, "the general reaction to the loosening of the regulations has been positive."

So Knapp doesn't see CMS reversing course and tightening the reins again. "One of the underlying themes of the whole Phase 2 regulations that came out in March was attempting to make the regulations easier to live with." CMS wanted to make it easier for physicians to provide health services that were an extension of their own practices.

"The feeling was the original same-building requirements were too restrictive and didn't take into account the fact that physicians sometimes furnish medicine in multiple buildings and settings," especially in suburban or rural areas, notes Knapp.

Also, the in-office ancillary exception applies to all DHS under the Stark II regs, no matter what. CMS does have some authority to decide what services count as DHS, and used that authority to say that nuclear medicine codes don't count as DHS, Knapp explains. Although Congress set out a list of broad categories of services that count as DHS, CMS will publish a list of specific CPT Codes that count as DHS on a periodic basis.

CMS can make nuclear medicine a designated health service, and the ACR has called on it to do so, says Hoffman. For now, physicians can self-refer for nuclear medicine services such as PET scans without fitting into any Stark II exemptions.

"In general, CMS was applauded for making the regulations more flexible," says Knapp. "Though I understand the concerns of radiologists I think it's not at all likely that CMS is going to turn around and tighten these regulations up."

The ACR is "considering possible legislative changes," Hoffman adds, and also working with non-Medicare payors to tighten up their rules on physician self-referrals of imaging scans.