

WHAT ASNC MEMBERS
NEED TO KNOW ABOUT

Stark Rules

What the Proposed Regulations Mean for Physician Practices

Last month, we briefly reviewed the critical pieces of a recent proposed regulation from the Centers for Medicare and Medicaid Services (CMS) regarding changes to the Stark rules, an extension of Medicare's mark-up prohibition of diagnostic tests, as well as proposed reimbursement rates for cardiac imaging services. We noted that, if adopted, the proposals would significantly impact imaging studies with shared interpretations and other common imaging arrangements.

At this point it is, of course, uncertain whether the proposed regulations will be finalized at all, or whether the regulations in final form will change substantially from the proposals. However, if CMS finalizes the regulations as they are currently proposed, here are examples of imaging arrangements that would continue to be appropriate and in compliance with the Stark and other Medicare rules.

In-Office Imaging

Although CMS expressed concern in the proposed regulations about particular arrangements, such as gold key leases, that use the in-office ancillary services exception to Stark, there is currently no proposal to eliminate or change significantly this Stark exception. Accordingly, physicians may still perform, and bill for, in-office imaging services that are located in physician clinic space and that the physician practice supervises.

Equipment and Technician Leasing

Physicians who do not generate a volume of tests that justifies employing their own technicians and buying their own equip-

ment may still lease equipment and technicians from third-party vendors. There are two crucial points in structuring these arrangements. First, physicians should commit to leasing sufficient blocks of time such that the physicians are taking meaningful economic risk on the imaging business. Second, the physicians must supervise the tests and take clinical responsibility for the testing. In this way, the physicians should be considered performing the diagnostic test themselves, rather than purchasing the tests from a third party.

If you want to mark-up the price of the diagnostic tests, do not enter into "per-click" arrangements for equipment and technicians.

Mark-up Prohibitions

The proposed rules do not prohibit cardiologists from contracting with radiologists for professional interpretations; but they do prohibit such arrangements from being a profit-maker for the cardiologist. Under the proposed rules, if you want an independent contractor radiologist to perform professional interpretations for your practice, have the radiologist do their own billing. The proposed rules would prohibit the cardiologist from making a profit on the radiology services anyway. Furthermore, the Stark and other Medicare billing rules create a host of potential regulatory issues that are better avoided.

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