

Physicians with In-Office MRI, CT and PET

Need to Prepare for New Stark Law Disclosure Requirement Now

By: MICHEL M. MARCOUX

Physicians who refer Medicare patients for in-office magnetic resonance imaging (MRI), computed tomography (CT) or positron emission tomography (PET) tests need to update the internal policies and procedures of their group practices now in order to ensure that they do not run afoul of the Stark law's new disclosure requirement that takes effect on January 1, 2011.

The Centers for Medicare and Medicaid Services (CMS) promulgated a final rule implementing Section 6003 of the Patient Protection and Affordable Care Act (PPACA), which amends the Stark law to require physicians to provide patients that are referred for in-office MRI, CT or PET tests with a list of at least five alternative suppliers in the area of the physician's practice. Failure to provide notices when required would constitute a Stark law violation.

Summary of the New Stark Law Disclosure Requirement

Generally, the Stark law prohibits physicians from referring Medicare

patients for certain "designated health services" to any entity with which the referring physician, or his or her immediate family members, has any direct or indirect financial relationship. The entity furnishing the designated health services is also prohibited from billing Medicare for the services referred by the related physician.

There is an exception, however, for in-office ancillary services if certain supervisory, location and billing requirements are met. Section 6003 of PPACA modified that exception to require physicians who refer for in-office MRI, CT or PET scans to provide their Medicare patients at the time of referral with a written list of at least five other suppliers who furnish those services within 25 miles of the physician's office. The alternative suppliers cannot be a physician who is a member of the same group practice as the referring physician or an individual directly supervised by the referring physician or by another physician in his or her group practice.

The notice must be reasonably understandable to patients and include the names, addresses and telephone

numbers of at least five other suppliers that provide the referred services. If fewer than five suppliers are located within the 25-mile radius, then all suppliers within this area should be listed. If there are no alternative suppliers in the 25-mile radius, then the physician must only inform the patient that he or she may obtain services from another supplier, but need not provide a list of alternatives. Importantly, hospitals are not included within the definition of supplier so, while a hospital may be included in the notice, it does not count in determining whether at least five suppliers are listed.

CMS reiterates in the preamble to the final rule that a written notice should be presented to the patient each time a CT, MRI or PET referral occurs, even if prior disclosures have been made to the same patient. Further, if a referral is made by phone, a written notice should still be made by mail or even e-mail and documented.

Physicians should document their compliance with the disclosure requirement as a matter of prudent business practices, according to CMS. For example, the physician could document in the patient's chart that the notice was given to the patient. However, CMS did not adopt a provision in the proposed rule that would have required the maintenance of a signed disclosure form from the patient. In addition, CMS encouraged, but did not require, physicians to update the list of alternative suppliers annually and to consider whether the listed suppliers are accepting new Medicare patients.

Several Traps Could Lead to Possible Technical Stark Law Violations

The final rule sets several traps for physicians and group practices as they try to comply with the new disclosure requirement that could lead to possible

technical Stark law violations. For example, the following would technically violate Stark under the final rule (i) providing a list of five alternative suppliers that does not include an address or telephone number for one or more of the suppliers, (ii) overlooking or omitting a supplier in a 25-mile radius that has fewer than five suppliers or (iii) mistakenly including a hospital on a list of five alternative suppliers.

Steps Physicians Should Take Now to Comply

In order to ensure that their group practices comply with the new Stark law disclosure requirement that takes effect January 1, 2011, physicians need to act quickly to (i) develop a standard disclosure language or notice that will be used for this requirement, (ii) develop and adopt written policies and procedures to ensure initial and continued compliance with this requirement and (iii) train their employees on the new rules and new written policies and procedures that their group practices have adopted. Because of the potential traps that could lead to a technical violation of the Stark law if the disclosure requirement is not met and the inflexible and harsh ramifications that can result from such a violation, physicians should consider asking legal counsel to help them navigate the compliance process.

The final rule, which was published in the Federal Register on November 28, 2010, as part of the 2011 Medicare Physician Fee Schedule is available online at <http://edocket.access.gpo.gov/2010/pdf/2010-27969.pdf>.



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