

July 6, 2007

Health Law Client Newsletter

Proposed Stark Law and Medicare Billing Rules Would Prohibit Many Common Practices.

On July 2, 2007, the Centers for Medicare and Medicaid Services (CMS) issued proposed amendments to the regulations implementing the federal self-referral law (the so-called "Stark Law") as well as Medicare regulations related to billing for purchased diagnostic tests and interpretations. If adopted, these amendments would prohibit many common practices that CMS believes have led to abuses.

Stark Law Changes. The Stark Law prohibits physician Medicare and Medicaid referrals to providers of "designated health services" ("DHS Providers") if the physician has a direct or indirect ownership interest in or a compensation arrangement with the DHS Provider, unless an exception applies. There are separate exceptions for ownership interests and compensation arrangements. "Designated health services" include, among other things, hospital services, imaging services, and clinical laboratory services (including both professional and technical components). The proposed changes include the following:

- *Services furnished "under arrangements" with hospitals.* Under the current rules, if a physician-owned entity (POE) furnishes services to a hospital "under arrangements" with the hospital, the POE is not considered a DHS Provider. Under the new rules, the POE would also be considered a DHS Provider. Physicians can own DHS Providers only in limited circumstances (e.g. rural areas).
- *Percentage compensation arrangements.* Most of the current compensation agreement exceptions require that the compensation to the POE be "set in advance." However, the current rules allow the compensation from the DHS Provider to be based on a percentage of revenues--even if the physician owners of the POE refer for the services--if the percentage compensation is fair market value without regard to referrals and is established in advance. The new rules would prohibit percentage compensation arrangements in this situation except as to physician services. In the case of physician services, the percentage can be based only on revenues resulting from the physician's services, not other factors such as a percentage of savings of a hospital department. This would apply not only to independent contractor arrangements, but also to employment arrangements if the employee is required to make referrals to the employer or other specified parties.



- *Per-click leases.* If a POE leases space or equipment to a DHS Provider, it can be paid rent that is based on the units of service performed using the leased facilities, even if the physician owners refer patients to the DHS Provider for such services, so long as the payments are fair market value without regard to referrals. The new rules would prohibit such “per click” lease arrangements.
- *Collapse of entities.* The rules would treat an entity that is owned or controlled by a DHS Provider as the same entity as the DHS Provider. A similar rule would treat a physician owner of a POE the same as the POE itself.

Diagnostic Test Billing Rules. The proposed Medicare billing rules would apply the following limitations to bills for diagnostic tests other than clinical laboratory tests:

- A physician or medical group cannot bill for the professional component of a test unless it directly provides the technical component of the test through its full-time W-2 employees.
- If a physician or medical group bills for the professional and/or technical component of a test and such component is not performed by the billing physician or a full-time W-2 employee of the group, the billing entity must disclose the identity of the person or employer from which the component was purchased, and the amount charged cannot exceed the “net amount” paid to such party. The net amount is the amount actually paid to such party less any amounts paid back to the billing entity to cover the cost of space or equipment provided to such party.

Comments on the proposed regulations will be accepted until August 31, 2007.

This summary is not intended to be a comprehensive summary of the proposed rules. The rules can be found at the following website: <http://www.cms.hhs.gov/PhysicianFeeSched/PFSFRN/itemdetail.asp?filterType=none&filterByDID=-99&sortByDID=4&sortOrder=ascending&itemID=CMS1200867&intNumPerPage=10>

Attorneys Join Tampa Office

We are pleased to announce the expansion of our Florida health law practice with the addition of attorneys Ronald Christaldi, Meredith Lukoff and Kelly Zarzycki. Ron is a Florida Board-certified health care attorney. Ron, Meredith and Kelly were previously affiliated with the Tampa firm de la Parte & Gilbert.

* * * * *

If you have questions concerning this newsletter, please call Dennis Witherell or Jenifer Belt at 800-444-6659, or Ron Christaldi, Barbara Pankau or Erin Aebel at 800-677-7661.

This newsletter is designed to provide general information on matters of interest to health care providers and practitioners and is not intended to constitute legal advice.