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## **New Healthcare Law Requires Financial Disclosures By Referring Physicians**

The new healthcare laws signed by President Obama on March 23rd and 30th, and specifically the Patient Protection and Affordable Care Act (PPACA), includes a significant modification to the "in-office ancillary services" exception of the Stark Law. Physicians who refer patients for MRI, CT or PET services, to an entity in which the referring physician has a financial interest, including the physician's own office or medical group, must now provide written notice to the patient of the patient's ability to utilize an alternative supplier. Additionally, the notice must include a list of alternative suppliers. This amendment not only applies to referrals to a separate entity, but it also applies to referrals *within* a group practice.

All physicians and medical groups that have in-house MRI, CT, or PET imaging services (or that refer to an outside entity in which they have a financial interest) will need to make written financial disclosures to patients to comply with the new law in order to qualify for Medicare reimbursement. Failure to comply could result in civil monetary penalties of \$10,000 per medical imaging procedure.

Section 6003(a) of the PPACA requires the following:

1. At this time, the amendment applies *solely* to MRI, CT and PET services. However, the PPACA specifically states that the Secretary may extend the Section 6003(a) requirements to other designated health services (e.g., x-ray, clinical laboratory services, etc.).
2. The referring physician must inform the individual, in writing, *at the time of the referral*, that the individual may obtain the MRI, CT and/or PET services from another supplier.
3. The referring physician must provide the individual with a written list of *suppliers* who furnish the services in the area in which the individual resides. A "supplier" is defined as a physician or other practitioner, a facility, or other entity (other than a provider of services), including IDTFs. No specific guidance has been provided as to the number of alternative suppliers required to be listed on the written notice. Additionally, no guidance has been provided as to the definition of the "area in which such individual resides" (e.g., city, county, etc.). Until regulations are published, we recommend providing at least 3 to 4 alternative suppliers within 5-20 miles of the referring physician's primary medical office. To the extent patients are generally reside more than 20 miles from the referring physician's primary medical office, the written notice could state that the

referring physician will work with the individual to identify additional alternative suppliers.

4. This requirement applies *solely* to Medicare patients since it modifies an exception to the Stark Law and the Stark Law applies solely to Medicare patients.
5. Section 6003(b) of the PPACA provides that the requirements of Section 6003(a) were effective as of January 1, 2010. Due to the fact that the PPACA was not signed into law until March 23, 2010, it is more likely that the requirements of Section 6003(a) became effective as of March 23, 2010, or as of March 30, 2010 when President Obama signed into law the Health Care and Education Reconciliation Act of 2010. In any case, we recommend that referring physicians begin providing this written notice as soon as possible.

Violations of the Stark Law require the provider to refund to Medicare or Medicaid inappropriate payments received, and may result in civil monetary penalties, false claims act liability and/or exclusion from Medicare. Therefore, in order to ensure that all Medicare patients receive this notice, referring physicians may want to provide this notice as a matter of course to all patients.

For further information, please contact [Courtney Mathes](#) at (619) 338-6533.