



**End-of-Year Reminder to Physician Practices:
Patient Notice Required Starting January 1
for Certain In-Office Ancillary Services Referrals**

Commencing January 1, 2011, physicians who refer Medicare patients to their practices for certain MRI, CT or PET services will be required to give their Medicare patients written notice of alternative suppliers. This is a new disclosure requirement created by Section 6003 of the Patient Protection and Affordable Care Act which amends the Stark Law's In-Office Ancillary Services Exception. Physicians who rely on this Stark Law exception for referrals of MRI, CT or PET services to their practices after January 1, 2011 will be in violation of the Stark Law if they fail to comply with this new disclosure requirement.

CMS finalized the implementing regulations of the new disclosure requirement in the 2011 Physician Fee Schedule Final Rule (Final Rule), published in the November 29, 2010, Federal Register. In the Final Rule, CMS sets forth the following elements of the new disclosure requirement:

- The disclosure requirement only applies to those MRI, CT and PET services that are designated health services under the Stark Law (which are most MRI, CT and PET services provided in a physician's office).
- The referring physician must provide written notice to the patient at the time of each referral stating that the patient may receive the same services from a person other than the referring physician or a physician in the same practice as the referring physician.
- The notice must be written "in a manner sufficient to be reasonably understood by all patients."
- The notice must list the names, addresses and phone numbers of at least five suppliers, located within a 25-mile radius of the physician's office at the time of the referral, that provide the advanced imaging services for which the patient is being referred. For purposes of complying with this requirement, suppliers are defined as physicians, other practitioners, facilities and other entities that furnish advanced imaging services other than hospitals. Hospitals may be listed in the notice, but will not qualify as one of the five suppliers required to be listed.
- If fewer than five suppliers are located within 25 miles of the physician's office, the notice must list all the suppliers present within the 25-mile radius. If no suppliers exist within that area, no list of alternative suppliers is required (but the referring physician must still inform the patient that he or she may receive the advanced imaging services from another person).

CMS also provided in the Final Rule the following guidance with respect to the new disclosure requirement:

- The notice may include the following: (a) language notifying the patients that the inclusion of a supplier on the list is not an endorsement or recommendation of that supplier, and (b) language indicating the qualifications (e.g., accreditation or credentialing status) of an identified supplier.
- The referring physician is not required to obtain a patient's signature on the notice or retain a copy in the patient's file. However, CMS recommends that a referring physician document in some manner that he or she has complied with the disclosure requirement (e.g., document in the patient's chart that they received the disclosure).
- The list of suppliers provided in the notice should be reviewed by the referring physician, and updated as necessary, on an annual basis.

Please contact one of the attorneys in our Health Care Practice Group if you have questions about the new disclosure requirement.

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