



Important Changes Regarding Reimbursement for Diagnostic Tests are Included in the 2008 Physician Fee Schedule

Medicare has issued new regulations, to be effective January 1, 2008, that expand significantly the Medicare anti-mark up rule for diagnostic tests. This expanded rule will have a drastic effect on a provider's ability to bill Medicare for more than the cost of diagnostic tests which are either "purchased" by the provider or done in certain offices of a provider. Moreover, the expanded anti-mark up rule applies to both the technical component and the professional component of a test.

In commenting on the new rule, Medicare has stressed that the rule is designed to take the profit out of billing for certain tests and to ensure that a profit motive is not driving a provider's decision of where to send a patient for a diagnostic test.

This new expansion of the anti-mark up regulations is included in the 2008 Physician Fee Schedule. Specifically, Medicare will prohibit a physician or practice from billing in excess of its costs for either the technical or professional component of a diagnostic test, ordered by the billing physician or other supplier, when the billing physician or supplier either (a) outright "purchases" the components, or (b) the component is performed at a site other than the office of the billing physician or other supplier. For purposes of this new rule, office of a billing physician or other supplier is limited to space in which the physician organization provides substantially the full range of patient care services that a physician organization provides generally. It is important to note that the definition does not refer to an office in the "same buildings" as set forth in the in-office ancillary service exception under the Stark provisions.

Effectively, this means that if a practice maintains a separate office for the provision of diagnostic tests and does not provide substantially the full range of its services at such office, the practice may be prohibited from marking up the professional and/or technical component of services ordered by such practice and performed at such location. This prohibition will apply even if such location is (i) in the same building as another full service office of the practice, or (ii) a centralized location, as such term is defined in the Stark provisions. The limitation also applies when the component is "purchased" by the practice.

In essence, when read together with the existing Stark regulations, this means that a practice may, if it meets the requirements of applicable Stark exception, be permitted to order, perform and bill for a test; but, based upon the new provisions, it may not be able to charge in excess of its costs. Further, the commentaries accompanying the new rule make it clear that overhead is not to be included in the determination of cost.

Providers are encouraged to review their existing ancillary activities. To the extent the practice provides services which may fall within this anti-markup provision, we strongly suggest that the service be reviewed as well as the applicability of these billing limitations.

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We will be presenting on this topic in a national teleconference at 1:30 p.m. on November 28, 2007 with representatives of Medicare responsible for these provisions. The teleconference is being provided through The Beard Group. GWT has arranged to make this teleconference available to its clients without charge. We have enclosed the announcement for the teleconference with this memorandum.

If you have questions regarding this new development, please do not hesitate to contact us.

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Please call any attorney at GWT with whom you are accustomed to working, to discuss the impact of the New Law on your facility or practice.

About Garfunkel, Wild & Travis, P.C.

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