

# Health Law Bulletin

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## CMS Finalizes Rules On Notification Of Options For Advanced Imaging Services Under Stark

Almost a year later, the state of limbo regarding disclosure requirements for advanced imaging suppliers is over. Although the provision of the law that imposed the requirement to provide patients with a list of alternate suppliers had an effective date of January 1, 2010, CMS only finalized regulations for the disclosure requirement last week and has established January 1, 2011, as the effective date for the regulations.

Earlier this year, we sent out a bulletin explaining this provision of the federal health care reform law that affects physicians whose groups provide MRI, CT, and PET scans to their patients. The federal law created a requirement that a referring physician for these services must notify the patient that the patient may obtain the service from someone other than the referring physician or someone in the referring physician's group practice. The provision also requires the referring physician to provide the patient with a list of alternate suppliers who furnish the service in the area in which the patient resides.

The new regulations are included in the language of the In-Office Ancillary Services Exception of the Stark self-referral law. They require that, for any patient whose care is paid by a federal health care program, a physician referring a patient for most MRI, CT, and PET scans must provide written notice to the patient at the time of the referral that the patient may receive the same services from another supplier. The notice must include a list of at least five other suppliers that provide the service for which the individual is being referred and which are located within 25 miles of the referring physician's office.<sup>1</sup> If there are fewer than five suppliers providing the same service within 25 miles, the physician must list all of the other suppliers. If there are no alternate suppliers within 25 miles, no list of alternative suppliers is required. Finally, the notice must be written in a manner sufficient to be reasonably understood by all patients and should include the name, address, and telephone number for each of the alternate suppliers.

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<sup>1</sup> CMS concluded that measuring the area covered by the list based on each patient's residence would be impractical for providers and instead chose to measure from the office of the referring physician.

In the preamble to the regulations, CMS provided additional guidance to physicians in implementing this new requirement. These areas of additional guidance include:

- Even though the statute allows the Secretary of HHS to expand the disclosure requirement beyond MRI, CT, and PET scans, the regulation is limited only to those three services at this time.
- The requirement applies only to MRI, CT, and PET services that are categorized as “radiology and certain other imaging services” in the list of CPT/HCPCS codes. Any MRI, CT, and PET services not identified on that list are not subject to the disclosure requirement.
- The disclosure notice must be provided to the patient each time one of the applicable imaging services is referred. If a referral is made via phone call, the written disclosure must be provided by mail or email in addition to providing verbal disclosure over the phone.
- If a physician chooses to do so, he or she may include language on the disclosure notice that provision of the list is not intended as an endorsement or recommendation of the suppliers on the list.
- As long as a referring physician includes five suppliers on the list (or less than five if less than five are in the 25-mile area), the physician may also list hospitals in addition to the imaging suppliers. Hospitals, however, may not substituted for the required five imaging suppliers.
- CMS rejected making an exception for time-sensitive or emergency situations, stating that “the occurrence of emergencies in physician offices that require a referral for advanced imaging under the in-office ancillary services exception is rare enough that it does not warrant granting an exception.”
- Physicians may use any means available to develop the list of alternate suppliers. CMS is not going to develop a database of suppliers from which physicians may choose, nor will CMS require Medicare contractors to provide such information.
- A referring physician must ensure that the list of alternate suppliers can provide the same service for which the patient was referred. Listing suppliers who cannot provide the required service will not be viewed as compliance with the disclosure requirement.
- CMS suggests that the alternate supplier list be reviewed and updated annually for accuracy, and, while physicians are not obligated to list only suppliers that are accepting new Medicare patients, referring physicians should make a reasonable effort to ensure that the alternate providers are viable options for their patients being referred.
- The referring physician is not required to get the patient’s signature to document that the physician provided the alternate supplier notice. However, CMS considers it a “prudent business practice” for the physician to document in the patient’s chart that the notice was given to the patient.