



Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.
800 North Magnolia Avenue, Suite 1500
P.O. Box 2346 (ZIP 32802-2346)
Orlando, FL 32803

407-841-1200
407-423-1831 Fax
www.deanmead.com

Attorneys and Counselors at Law
Orlando
Fort Pierce
Viera

ALAN H. DANIELS
407-428-5103
adaniels@deanmead.com

TRACY J. MABRY
407-428-5116
tmabry@deanmead.com

August 14, 2007

CMS Alert: Expansion of Anti-Markup Rule for Diagnostic Tests - Professional and Technical Component

The Centers for Medicare and Medicaid Services (“CMS”) recently proposed, and is presently soliciting public comments to, a number of key changes to the 2008 Medicare Physician Fee Schedule, including the following discussed proposal which, if adopted, would limit the amounts which a physician group (or physician) could bill the Medicare Program for the professional component of diagnostic tests performed on its or their behalf by any part-time employee or independent contractor.

Anti-Markup Proposal. Presently, the Medicare Manual (under the reassignment rules) prohibits a physician group (or an individual physician) from purchasing the technical component of a diagnostic test performed for a group (or physician) patient by an outside supplier and billing the Medicare Program for such test in an amount greater than the price paid by the billing group (or physician) for such test. CMS is concerned that the present Medicare Manual prohibition on the markup of purchased diagnostic tests does not cover (or apply) to all diagnostic tests which a physician group (or individual physician) may otherwise bill the Medicare Program under a “reassignment of benefits” nor does it address perceived program abuses resulting from the ability of physician groups (or individual physicians) to make a profit from an outside physician’s interpretation of diagnostic tests performed for its or their patients. To address such concerns, CMS is proposing to elevate the current Medicare Manual “anti-markup” rule for purchased diagnostic tests to a “rule of law” applicable to the technical component of all diagnostic tests, whether purchased or not, and expand the scope of such rule so that it applies to the professional component of diagnostic tests performed for or on behalf of a billing group (or physician) by any part-time employee or independent contractor. Under this proposal, a physician group (or physician) billing the Medicare Program, under a reassignment of benefits, for the technical or professional component of any diagnostic tests performed for its patients by any physician or other organization, excluding only such services performed by a full-time employee of the billing group (or physician), will be legally prohibited from billing the Medicare Program for such service in an amount greater than the lesser of: (i) the normal Medicare allowable for the billed service, or (ii) the compensation or other amounts paid or payable by the

August 14, 2007

Page 2

billing group (or physician) to the service provider for the billed services, excluding any amounts paid or payable by the billing group (or physician) to reimburse the service provider for rent for office space or equipment, if any, which the service provider (or related party) leases from or through the billing group (or physician).

The proposed expanded anti-markup rule does not apply to the technical component of diagnostic tests performed by or for a physician group (or physician) utilizing diagnostic equipment owned (or leased) by the billing group (or physician) (no reassignment of benefits). Further, the proposed, expanded anti-markup rule is not to apply to the professional component of diagnostic tests billed the Medicare Program by an independent diagnostic testing facility, so long as the diagnostic tests to which such billed services relate are not ordered by a physician-employee of such facility, by the physician performing the professional interpretation of such test or by another physician-member of the reading physician's group practice.

For further information concerning the above-described proposed expanded anti-markup rule, please contact one of the members of Dean Mead's Health Law Department.