



DEAN
MEAD

e-newsletter
from the **healthcare** and **life sciences** team

August 3, 2007

CMS Alert: Independent Diagnostic Testing Facilities

The Centers for Medicare and Medicaid Services (“CMS”) recently proposed new federal regulations, and is presently soliciting public comments concerning a number of new and modified performance standards applicable to Independent Diagnostic Testing Facilities (“IDTFs”) and their supervising physicians. Certain of these proposed rules, if adopted, could have a dramatic impact on individuals operating or looking to operate or acquire diagnostic imaging facilities and other medical ventures which are required to be enrolled as an “IDTF” with the Medicare Program.

To learn more about the proposed rules and changes by CMS, view the entire article written by Alan H. Daniels, a member of our Healthcare and Life Sciences Team, below. And, as always, please do not hesitate to contact us if you have any questions.



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

August 1, 2007

CMS Alert: Independent Diagnostic Testing Facilities

The Centers for Medicare and Medicaid Services (“CMS”) recently proposed new federal regulations, and is presently soliciting public comments concerning a number of new and modified performance standards applicable to Independent Diagnostic Testing Facilities (“IDTFs”) and their supervising physicians. Certain of these proposed rules, if adopted, could have a dramatic impact on individuals operating or looking to operate or acquire diagnostic imaging facilities and other medical ventures which are required to be enrolled as an “IDTF” with the Medicare Program. Physicians or organizations currently leasing or sub-leasing any facilities, equipment or personnel from an existing IDTF and/or physicians serving or considering serving as a supervising physician of an IDTF would also be affected by adoption of the proposed rules. The following is a summary of the proposed rules and changes by CMS.

Prohibition on IDTF Sharing Arrangements. CMS has proposed prohibiting IDTFs from sharing any of their office facilities, equipment, medical staff or other personnel with any other individual or organization, including prohibiting IDTFs from leasing or subleasing any of their office facilities, equipment and/or personnel to any other individual or organization. If adopted, all existing lease or sharing arrangements for office facilities, equipment and/or personnel between existing IDTFs and any other individual or organization will be required to be terminated as a condition of such IDTFs remaining enrolled in the Medicare program.

In addition, while this new proposed performance standard is currently slated to apply only to fixed based (physical site) IDTFs, CMS is also seeking public comments on establishing a similar “no sharing” rule for mobile IDTFs. If expanded to mobile IDTFs, those mobile imaging facilities and other mobile facilities currently enrolled in the Medicare program as IDTFs will no longer be permitted to be leased to any other individual or organization.

Prohibition on Retroactive Billings. Currently, IDTFs are legally permitted to retroactively bill Medicare for services which they provide to Medicare beneficiaries before they submit a Medicare enrollment application or before they are approved to participate in the Medicare Program. CMS is now proposing that a fixed “initial date of enrollment” be established for all newly enrolled IDTFs, and that newly enrolled IDTFs be precluded from billing the Medicare Program for any services which they may otherwise render to a Medicare beneficiary before their “initial date of enrollment”. Under the new proposed performance standard, the “initial date of enrollment” for newly enrolled IDTFs will be the later of: (i) the date the IDTF’s owners submit

August 1, 2007

Page 2

a duly completed and signed Medicare enrollment application to the local Medicare contractor, provided that such application is able to be processed and is subsequently approved by the local Medicare contractor; or (ii) the date such IDTF commences rendering services at its new practice location.

Supervising Physician Responsibilities/Elimination of Administrative Responsibility. Under the current IDTF performance standards regulations which went into effect January 1, 2007, supervising physicians of IDTFs are responsible for the overall operation and administration of their IDTFs, including employment of personnel competent to perform test procedures, and for assuring compliance by their IDTF with applicable regulations. This performance standard has been interpreted as shifting the overall administrative responsibility for IDTFs from their owners or other administrative staff to the IDTF's supervising physicians. CMS has indicated that it did not intend for the current performance standard regulations to shift such responsibility from the owners or administrative staff of IDTFs to the IDTF's supervising physicians and, to prevent such standard from continuing to be misinterpreted, CMS is now proposing to delete this performance standard in its entirety.

For further information concerning the above-described proposed IDTF performance standards or further information concerning existing IDTF performance standards, please contact one of the members of Dean Mead's Health Law Department.



e-newsletter

from the **healthcare** and **life sciences** team

www.deanmead.com

NOTE: Dean Mead provides the information in this e-Newsletter as a service to professionals and clients. While the information in this e-Newsletter deals with legal issues, it does not constitute legal advice. If you have specific questions related to the information in this e-Newsletter, you are encouraged to consult an attorney who can investigate the particular circumstances of your situation. Due to the rapidly changing nature of the law, Dean Mead is not responsible for informing you of future legal developments. If you would like to be removed from our distribution list, please reply to this email and type REMOVE in the subject line.