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PHYSICIAN REFERRALS FOR CERTAIN IMAGING SERVICES (UPDATE ON DISCLOSURE REQUIREMENTS)

The Center for Medicare and Medicaid Services ("CMS") released the 2011 Medicare Physician Fee Schedule on June 25, 2010 (the "2011 Statement"). Among other things, the 2011 Statement addresses Section 6003 of the Patient Protection and Affordable Care Act of 2010 ("PPACA"). Section 6003 creates a new disclosure requirement for physicians or group practices that refer patients for certain imaging services offered by their clinic. Prior to the enactment of PPACA, these same physicians only had to satisfy the in-office ancillary services exception as interpreted at 42 C.F.R. 411.355(b) for the referral of their patients for certain radiological procedures. Section 6003 of PPACA provides that with respect to referrals by physicians for MRI, CT, and PET services, as well as such other radiology or imaging services included in the DHS category that the Secretary determines appropriate. The referring physician must inform a patient in writing at the time of the referral that the patient may obtain the service from a person, other than the referring physician or someone in the physician's group practice, and provide the patient with a list of suppliers who furnish the same service in the area in which the patient resides. CMS states in the 2011 Statement that while they are considering whether to expand this disclosure requirement to other radiology and imaging services beyond MRI, CT, and PET, they are not inclined to do so at this time.

CMS addresses the Section 6003 notice requirement in the 2011 Statement. It now proposes to amend 42 C.F.R. 355(b) to add a new subsection (7) that will require, among other things, the following – (i) the notice to patients now required under Section 6003 of PPACA must be written in a manner sufficient to be reasonably understood by all patients; (ii) nothing in the disclosure notice or list of suppliers indicates or implies that the patient must receive imaging from a supplier on the list if the patient elects not to receive the service from the referring physician; (iii) only suppliers must be included on the list and not acute care hospitals; (iv) the list of suppliers should be limited to those suppliers within a 25 mile radius of the physician's office location, not the patient's residence as many of us feared - recognizing that this would be an administrative burden on the physician's office; and (v) the list should include the 10 closest suppliers within the 25 mile radius, unless there are fewer than 10 suppliers within the 25 mile radius in which case the list should include all suppliers within the 25 mile radius of the physician's office. The list to be provided to the patient must include the name, address, and telephone number of the suppliers as well as the distance from the physician's office. Finally, the physician should document receipt of the notice with patient's signature with the signed copy being maintained as an element of the patient's medical record. The effective date for all of this would be January 1, 2011.

Since this is a notice of a proposed rule-making, it is difficult to predict the final result. However, the 2011 Statement gives physicians, their lenders, and their landlords valuable insight into CMS' thinking and the direction they intend to take the Section 6003 notice requirement.

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