



CMS Relaxes Rules on Ordering and Documenting Imaging Services

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Two years ago, CMS published an interim final rule¹ (with a comment period) implementing several changes to the Medicare and Medicaid programs mandated by the Patient Protection and Affordable Care Act. The interim final rule of May 2010 established new rules on obtaining and maintaining written orders for imaging services, as well as orders or referrals for durable medical equipment, home health care, and laboratory services. The interim final rule required the legal name and national provider identifier (NPI) of the ordering physician or practitioner on the claim. In addition, the ordering and furnishing providers were each required to maintain documentation of the written order for seven years.

The ACR[®], the RBMA, and other radiology organizations jointly submitted comments to CMS regarding specific aspects of the interim final rule. Now, CMS has signaled its acceptance of several major changes requested by the radiology organizations. In a final rule² published April 27, 2012, CMS has revised the ordering and documentation requirements for imaging services in several ways that are favorable to the radiology community.

The most significant change is that the rule now requires only the ordering provider and the technical-component supplier to maintain documentation of the order or referral for seven years. Radiologists (or radiology groups) providing the professional component are not required to maintain docu-

mentation of orders unless they also furnish the technical component (as in radiologist-owned imaging centers).

In a big win for imaging providers, the final rule also relaxes the requirements covering who may order an imaging service. While the rule still requires ordering physicians and other eligible professionals to be enrolled in the Medicare program (or to maintain a valid opt-out record), the ordering provider is not required to be in registered in the Medicare provider enrollment, chain, and ownership system (PECOS) in order for Medicare to pay a claim for imaging services. This change addresses those circumstances where the ordering physician is enrolled in Medicare, but not yet registered in PECOS.

In the preamble to the final rule, CMS states that these conditions apply only to imaging services furnished by IDTFs, mammography centers, portable imaging facilities, and radiation-therapy centers. The final rule does not apply to imaging services provided in the hospital outpatient setting. Unfortunately, CMS does not make this distinction in the language of the rule itself, but only in the guidance published with the final rule. This CMS failure to be more clear in the regulatory language might lead to confusion in the future as Medicare administrative contractors (MACs) and other agencies seek to implement these requirements.

The requirements for establishing and maintaining Medicare billing privileges (for both the ordering physician and the supplier of the ordered test) have increased significantly in recent years. These efforts, lead by Congress and CMS, are intended to root out ineligible and fraudulent claims, but they apply broadly to all providers and suppliers treating Medicare beneficiaries.

As a result, radiologists and imaging centers are increasingly subject to complex audits of their Medicare claims. Given the

heightened regulatory authority of CMS and its auditors, now is a good time for radiology practices and imaging suppliers to review their Medicare enrollment and revalidation procedures, claims for Medicare services, and policies for retaining appropriate documentation.

Documentation Requirements

The final rule requires imaging providers and suppliers to maintain documentation of written orders for seven years from the date of service, including the NPI and legal name of the ordering physician or eligible nonphysician practitioner. In addition, the final rule requires ordering providers and suppliers to maintain documentation for seven years from the date of service.

In another favorable change, CMS clarified that documentation of the order must be retained from the date of service, rather than from the date of the order, as originally stated in the May 2010 interim final rule. This change makes the documentation requirement consistent for both ordering and furnishing providers.

The documentation of the order or referral must be supplied to CMS or the Medicare contractor upon request. Failure to comply with the documentation requirements could result in a one-year revocation of Medicare enrollment and billing privileges, among other penalties.

CMS has provided a much-needed clarification, in the final rule, that the technical-component provider/supplier of an imaging service (not the radiologist supplying only the professional component) is required to comply with the documentation requirement. As a result of the advocacy efforts of the RBMA, the ACR, and others, CMS has recognized that the interpreting physician does not have documentation of the order when the entities supplying the technical and professional components are different. Thus, the written order must be maintained only by the technical-component provider/supplier.

For the past several years, Medicare comprehensive error rate testing auditors have been demanding that interpreting physicians provide copies of orders for imaging studies. With this final rule, radiologists and radiology groups providing professional services at an imaging site not owned by their practices are not required to maintain documentation of the order for the seven-year period.

Enrolling or Opting Out

Physicians and eligible professionals who order (or refer patients for) any Part B items and services, excluding Part B drugs, are required to maintain an approved Medicare enrollment record or a valid opt-out record. Further, claims submitted for Part B items or services must contain the legal name and NPI of the physician or eligible professional who ordered/referred for the item or service.

If the item or service is ordered/referred for by a resident or

intern, the claim must identify the teaching physician's legal name and NPI as the ordering or referring supplier. MACs will reject Part B claims if the orderer or referrer has neither an approved enrollment record nor a valid opt-out record.

As a result of the final rule, physicians and other eligible professionals who order imaging services must be enrolled in the Medicare program (or maintain a valid opt-out record). They are not, however, required to be registered in PECOS. So long as the ordering physician or eligible professional has an approved enrollment record in Medicare (whether in the legacy system or in PECOS), the order qualifies for payment.

CMS offers the public several ways to determine whether a physician or eligible professional is enrolled in the Medicare program. For example, CMS publishes a list of enrolled providers at www4a.cms.gov/Medicare/Provider-Enrollment-and-Certification/MedicareProviderSupEnroll/MedicareOrderingandReferring.html.

In the future, CMS intends to activate automated edits in the claims-processing system that would cause a claim to go unpaid if the orderer does not have an approved enrollment record in Medicare. According to CMS, providers will be given ample notice prior to activation of the automated edits.

NPI Submission

All physicians and eligible professionals are required to include their NPIs on all applications to enroll in the Medicare program and on all Medicare and Medicaid claims for payment, including both paper and electronic claims. In addition, the NPI must be furnished to the state agency in connection with every Medicaid provider agreement.

This aspect of the final rule does not depart from the interim final rule or the current practice of most providers and suppliers. While the final rule creates the first federal regulation mandating submission of the NPI on the enrollment application and claim, the instructions for the Medicare enrollment application already requested disclosure of the NPI. The Medicare program has required fee-for-service providers and suppliers to use their NPIs on claims since May 23, 2008.

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