

# DME Medicare News

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*This is NOT a Notice of Action Against You*

## Information on Physician Self-Referrals

### Why You Have Received This Information

We are providing you with this information to advise you of the requirements of Section 1877 of the Social Security Act (42 U.S.C. Section 1395nn), a provision of the law that prohibits certain physician self-referrals in the context of the Medicare and Medicaid programs. Under the law, beginning on January 1, 1995, physicians cannot make self-referrals for certain designated health services (DHS). DHS include any of the following items or services:

- Clinical laboratory services;
- Physical therapy services;
- Occupational therapy services;
- Radiology services, including MRI, CAT scans, and ultrasound services;
- Radiation therapy services and supplies;
- Durable medical equipment and supplies;
- Parenteral and enteral nutrients, equipment, and supplies;
- Prosthetics, orthotics, and prosthetic devices and supplies;
- Home health services;
- Outpatient prescription drugs; and
- Inpatient and outpatient hospital services.

### What the Law Prohibits

The law prohibits a physician who has a financial relationship with an entity from referring Medicare patients to that entity to receive a DHS. The prohibition also applies if a physician's immediate family member has a financial relationship with an entity. A financial relationship can exist as an ownership or investment interest in or a compensation arrangement with an entity. The law is triggered by the mere fact that a financial relationship exists; it does not matter what the physician intends when he or she makes a referral.

Under the Medicare program, an entity cannot bill Medicare, Medicaid, the beneficiary, or anyone else for a DHS furnished to a Medicare patient under a prohibited referral. Under the Medicaid program, the Federal Government cannot pay Federal financial participation (FFP) to a State for medical assistance that is furnished as the result of a referral that would be prohibited under Medicare if the Medicare program covered the items or services involved in the same way as they are covered under the State plan.

### How Exceptions Affect the Prohibition

The law contains a number of exceptions to the general prohibition. You may wish to consult the law to see if a particular financial relationship qualifies for an exception.

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## Enforcement, Penalties and Sanctions Under Medicare

The law requires physicians and entities to comply with the prohibition on referrals for DHS beginning on January 1, 1995. The law prohibits Medicare payments for DHS provided in violation of the law. If a person collects any amount for services billed in violation of the law, he or she must make a refund.

A person can be subject to a civil money penalty or exclusion from Medicare, Medicaid, and other programs if that person: (1) presents or causes to be presented a claim to Medicare or bill to any individual, third party payer, or other entity for any DHS the person knows or should know was furnished as the result of a prohibited referral, or (2) fails to make a timely refund. The civil money penalty is a maximum of \$15,000 for each service.

If a physician or an entity enters into a circumvention scheme (such as a cross referral arrangement), which the physician or entity knows or should know has a principal purpose of assuring referrals to a particular entity that would be prohibited if made directly, the physician or entity could be subject to a civil money penalty and exclusion from Medicare, Medicaid, and other programs. The civil money penalty can be no more than \$100,000 for each scheme.

## How HCFA Will Implement the Prohibitions

We published a proposed rule covering the referral prohibition as it relates to clinical laboratory services on March 11, 1992. We will publish a final rule with comment in early 1995 covering clinical laboratory services, which will include new provisions added to the law in 1993 by the Omnibus Budget Reconciliation Act of 1993. We will also publish a proposed regulation on the rest of the DHS for Medicare and Medicaid as soon as we can in 1995.

Pending the publication of final regulations on DHS, our enforcement will rely on the language of the statute.

In addition, once the regulations covering clinical laboratory services are final, we will also rely on them in appropriate cases. Appropriate cases are those in which interpretations of the law in the context of referrals for clinical laboratory services apply equally to situations involving referrals for DHS.

We will begin compliance audits for these provisions once the final rule on clinical laboratory services is published.

We have attached a short "Summary of Important Terms and Exceptions in Section 1877", that provides more information about the prohibition and summarizes the many exceptions. We may also issue instructions that apply the law and regulations to specific questions or issues.

## Summary Of Important Terms and Exceptions in Section 1877 of the Social Security Act — Physician Self-Referrals

This attachment contains only a summary of some important provisions of the law. You should not rely on this summary, but instead consult the law itself. You may wish to seek competent legal and/or financial advice if you have any questions.

### What Constitutes A Financial Relationship —

A physician has a financial relationship with an entity if he or she (or an immediate family member) has an ownership or investment interest in that entity or a compensation arrangement with the entity.

A physician's or family member's ownership/investment interest may be through equity, debt, or other

means. It includes an interest a physician or family member has in an entity that does not itself provide DHS, but which owns or holds an investment interest in an entity that does provide these services (for example, an investment in a holding company).

A compensation arrangement exists when there is any arrangement in which payment of any kind passes between a physician (or an immediate family member) and an entity. For example, a physician has a compensation arrangement with an entity if the entity pays the physician a salary or consulting fee. A compensation arrangement also exists if a physician pays an entity for items or services. These payments can be direct or indi-

rect, overt or covert, in-cash or in-kind. The law does not regard as compensation a small list of specific payments, such as those meant to correct minor billing errors.

**What Constitutes A Referral** — A physician makes a referral when he or she makes a request for an item or service covered by Medicare Part B. It includes situations in which a physician requests a consultation with another physician, and covers any test or procedure that the other physician orders, performs, or supervises.

Also, a physician makes a referral for Part A or Part B services when he or she requests or establishes a plan of care which includes that DHS be provided to a patient.

**Exceptions Related To Ownership/Investment And Compensation Arrangements** — Although the definition of a financial relationship is broad, there are several exceptions in the law. Some exceptions relate to both ownership/investment interests and compensation arrangements, and some relate to only one of these. Because the exceptions are complex and detailed, we are only briefly listing them below. If you believe that one or more of them may apply to you, or if you wish to see a full list of exceptions and the requirements for each exception, you or your attorney should check the specific provisions of the law.

Exceptions related to both ownership and compensation arrangements:

- Physicians' services when a physician refers to a member of the same legitimate group practice;
- Certain in-office ancillary services furnished by solo practitioners and group practices; or
- Services furnished by certain organizations with prepaid plans (e.g., some HMOs).

Exceptions related only to ownership/investment interests:

- Ownership in certain publicly traded securities and mutual funds;
- DHS provided by a hospital in Puerto Rico;
- DHS furnished by a rural provider; or
- DHS provided by a hospital outside of Puerto Rico if the referring physician can perform services at the hospital and the ownership or investment interest is in the whole hospital (not in a subdivision of the hospital).

Exceptions related to compensation arrangements:

- Payments made for the rental of office space or equipment;
- Payments made to a physician (or immediate family member) who has a bona fide employment relationship with an entity;
- Payments made to a physician or family member for personal services;
- Payments involved in an isolated financial transaction;
- Payments made by a hospital to a physician if the payments do not relate to DHS;
- Payments made by a hospital to recruit a physician;
- Certain payments resulting from a group practice's arrangements with a hospital when DHS are provided by the group; or
- Payments by a physician to an entity for items and services.

**Most of the exceptions summarized above have various limitations and conditions. Therefore, it is necessary to consult the full text of the statute to fully understand the exceptions.**

**Any concerns regarding this information should be submitted in writing to:**

**Region A DMERC  
The MetraHealth Insurance Company  
Attn: Professional Relations Department  
P.O. Box 6800  
Wilkes-Barre, PA 18773-6800**