

Doctors must comply with new imaging disclosure rules

By **Christina Pazzanese**

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Physicians are contending with a new law that requires non-radiologists who have imaging equipment in their offices to tell patients that they can choose to seek CT, MRI and PET imaging services at other facilities instead.

The provision, which is included in the Patient Protection and Affordable Care Act, also requires doctors to provide patients with a list of places that provide these services near their hometowns.

The change is intended to offer patients greater transparency in doctor self-referrals and to curb the widespread use of imaging technology when it's not essential for care.

Failure to comply with the law will result in a denial of reimbursements from the Centers for Medicare and Medicaid Services (CMS).

Attorneys who represent physicians say that the provision – which went into effect on Jan. 1 – is confusing and vaguely worded, and puts an unfair administrative onus on busy doctors.

“I think it's a needless burden when you consider it in the context of all the things doctors have to do,” said attorney Dean P. Nicastro, who practices at Pierce & Mandell in Boston and formerly served as general counsel at the Massachusetts Medical Society. “This is just more paperwork.”

The good news is, however, that some relief from the new law's requirements may be coming soon.

In the CY2011 Physician Fee Schedule

update that came out in July, CMS proposed new guidelines to make compliance easier and more standardized for physicians.

Nicastro says that while he understands the rationale behind the new requirement, the process is not as simple as it sounds.

For one thing, the law itself does not specify how many suppliers should be on a given list, nor does it define the term “area” around a patient's residence when compiling such a list.

As a result, physicians have no way of knowing how much research they need to do to be in compliance, Nicastro said.

Regina Rockefeller, an attorney at Nixon Peabody in Boston, said that requiring doctors to provide a list of suppliers based on a patient's home address rather than the doctor's office location erroneously presumes that most patients seek medical care near their residence.

“I think when a lot of people need medical care, they're not at home,” she said, noting that a patient could be on a business trip or on vacation. “Here in Boston, people are here for second opinions from all over the world.”

It is far more reasonable, for example, to expect physicians on Cape Cod to be able to offer patients a list of local suppliers than it is to ask them to figure out who provides imaging services in other areas, she said.

“It is extremely hard to find out who the suppliers of CT scans are in Ann Arbor, Mich.,” said Rockefeller.

Despite the law, Rockefeller said that most patients probably won't seek out



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another supplier, particularly in Massachusetts where the state already mandates residents to have health insurance coverage.

“A patient with insurance has no motivation to shop around,” she said.

Patients are likely to stick with their own doctor, believing that he or she will better understand and accommodate the urgency as well as the context in which the scans are being ordered.

“They have a relationship of trust with their physician and a preference for one-stop shopping,” she said.

Lawrence W. Vernaglia, chair of the health care industry team at Foley & Lardner in Boston, says that the statute is further evidence that the government

“remains hostile” to doctors who provide ancillary services in their offices and sees the provision as a way to “make patients distrustful of doctors.” But he contends that the talk of the statute's undue burden is overblown.

“It's not a big deal. It's just a piece of paper,” said Vernaglia, who suggests that such lists can be assembled over a weekend by a Google-savvy office manager.

However, he agreed that some challenges remain. For example, the law requires that signed copies of the imaging suppliers' lists make their way into patients' files, and physician offices must have procedures in place to ensure this occurs.