

## CMS Clarifies Anti-Markup Rule for Diagnostic Tests

Since its inception on January 1, 2009, the *anti-markup rule* has caused confusion within physician practices regarding its applicability. As a result, the Centers for Medicare and Medicaid Services (CMS) recently released further instructions to its contractors, effective March 15, 2010, for handling tests subject to the anti-markup rule.<sup>1</sup>

The *anti-markup rule* was first instituted by CMS for the purpose of reducing overall healthcare expenditures by placing limits on how much physicians can be reimbursed for diagnostic tests they perform.<sup>2</sup> As an example, if a billing physician refers a Medicare patient to an outside physician for diagnostic tests, Medicare's payment to either party may not exceed the lowest of the following amounts: (1) the performing supplier's net charge to the billing physician; (2) the billing physician's actual charge; or, (3) the Medicare fee schedule amount for the test that would be allowed if the performing supplier billed Medicare directly.<sup>3</sup>

Diagnostic tests are made up of both a technical component (TC)—the supplies, equipment, and technicians—and a professional component (PC)—the physician's interpretation of the TC's results. The goal of the anti-markup rule is to prevent physicians from profiting from either of these components by first billing Medicare and then purchasing the tests from other physicians at a lower rate.<sup>4</sup>

The recent update issued by CMS indicates that when billing for either the TC or PC of a diagnostic test that another physician performs, the billing physician must indicate the name, address, and National Provider Identifier (NPI) of the performing physician.<sup>5</sup> Additionally, if the performing physician is enrolled with a different Medicare Administrative Contractor, both the billing physician and the performing physician must submit their own separate NPIs.<sup>6</sup> Also, if the billing physician performs only the TC or the PC and wants to bill for both, the TC and PC must be reported as separate line items.<sup>7</sup>

The effects of the anti-markup rule have not yet been evaluated due to its relatively recent implementation, but with these clarifications, CMS hopes to observe an increased level of physician compliance with anti-markup rule and, subsequently, a reduction in healthcare expenditures related to discrepancies in physician billing practices.

- <sup>1</sup> "CMS Further Clarifies Billing for Diagnostic Tests Subject to the Anti-Markup Rule", Medical Group Management Association, February 3, 2010, <http://www.mgma.com/article.aspx?id=32688&Ref=httpzx0zx1zx1www.mgma.comzx1searchzx1default.aspxzx2qzx4cms%20further%20clarifies> (Accessed March 2, 2010)
- <sup>2</sup> "CMS Enacts New 'Antimarkup Rule' Affecting Diagnostic Tests", Medical Group Management Association, Washington Link, February 2009, p. 14.
- <sup>3</sup> "Changes to Medicare Anti-Markup Rules Effective January 1, 2009" by Todd Rodriguez, Physician Law, December 2, 2008, <http://physicianlaw.foxrothschild.com/2008/12/articles/medicare/changes-to-medicare-antimarkup-rules-effective-january-1-2009/> (Accessed March 2, 2010)
- <sup>4</sup> "Revised Anti-Markup Rule Limits Physician Billing for Purchased Diagnostic Tests" by Robyn Arnold, Godfrey Kahn, April 20, 2009, <http://www.gklaw.com/resources/publication/843.pdf> (Accessed March 2, 2010)
- <sup>5</sup> "CMS Further Clarifies Billing for Diagnostic Tests Subject to the Anti-Markup Rule", Medical Group Management Association, February 3, 2010, <http://www.mgma.com/article.aspx?id=32688&Ref=httpzx0zx1zx1www.mgma.comzx1searchzx1default.aspxzx2qzx4cms%20further%20clarifies> (Accessed March 2, 2010)
- <sup>6</sup> "CMS Further Clarifies Billing for Diagnostic Tests Subject to the Anti-Markup Rule", Medical Group Management Association, February 3, 2010, <http://www.mgma.com/article.aspx?id=32688&Ref=httpzx0zx1zx1www.mgma.comzx1searchzx1default.aspxzx2qzx4cms%20further%20clarifies> (Accessed March 2, 2010)
- <sup>7</sup> "CMS Further Clarifies Billing for Diagnostic Tests Subject to the Anti-Markup Rule", Medical Group Management Association, February 3, 2010, <http://www.mgma.com/article.aspx?id=32688&Ref=httpzx0zx1zx1www.mgma.comzx1searchzx1default.aspxzx2qzx4cms%20further%20clarifies> (Accessed March 2, 2010)



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