

### *Under Arrangement Per Click & Block Leases*

Certain physician - hospital relationships referred to as "under arrangements" and "per click" leasing ventures have come under increasing regulatory scrutiny. An under arrangements transaction occurs when the hospital contracts with a third party (typically a joint venture owned, at least in part, by physicians who may refer) to provide a hospital service, and the hospital then bills and is reimbursed by Medicare for those services and pays the supplier, or joint venture.

Under per-click or block leasing arrangements, hospitals lease equipment and facilities to a physician group for specific time blocks, or share space and equipment with other lessees.<sup>1</sup> The physicians using the facility pays a small lease fee, and then the physician bills the payor as if the physician provided the services, keeping the monetary difference between the lease payment and insurance reimbursement. Through the arrangement, the technical fee that used to be paid solely to the imaging center is now being shared with the referring physicians.<sup>2</sup>

Currently, this type of "arrangement" is permitted under Stark as the "entity" to which the physicians refer patients is the hospital, not the joint venture, i.e., the "entity" is deemed to be the entity that submits the reimbursement claim to Medicare.<sup>3</sup> However, buried in the July 2, 2007, 2008 Medicare Physician Fee Schedule proposed rule, CMS has included revisions to the Stark regulations which would prohibit space and equipment lease arrangements where per-click payments are made to a physician lessor who refers patients to the lessee.<sup>4</sup>

Specifically, CMS has proposed to broaden the definition of "entity" to include the person or entity that performs the designated health services. Of note, CMS has criticized certain types of these arrangements as "inherently susceptible to abuse because the physician lessor has an incentive to profit from referring a higher volume of patients to the lessee." The public comment period expired on August 31, 2007, however the final rule has not yet been released. While the proposed Stark provisions contained in the 2008 Physician Fee Schedule proposed rule do *not* appear to currently apply to arrangements where the physician is the lessee and rents space from a hospital or other entity on a per-click basis, CMS is considering whether or not to prohibit these arrangements as well.

<sup>1</sup> "Outpatient Imaging Centers: Building Blocks for Survival," By Tor Valenza, Imaging Economics, April 2007; "Accreditation Ensures Quality, Guarantees Payment," By Dana Hinesly, Imaging Economics, March 2007.

<sup>2</sup> "Assault on Lease Deals Could Bring Their Demise," Anne M. Haule, Diagnostic Imaging, April 2007, p. 1.

<sup>3</sup> "Potential Impact of 2008 Medicare Physician Fee Schedule Proposed Rules on Imaging Arrangements," By Thomas W. Greeson and Health M. Zimmerman, Reed Smith LLP, Health Lawyers Weekly, available at

[http://www.reedsmith.com/\\_db/\\_documents/Potential\\_Impact\\_of\\_2008\\_Medicare\\_Physician\\_Fee\\_Schedule.pdf](http://www.reedsmith.com/_db/_documents/Potential_Impact_of_2008_Medicare_Physician_Fee_Schedule.pdf) (Accessed 9/25/07).

<sup>4</sup> "Potential Impact of 2008 Medicare Physician Fee Schedule Proposed Rules on Imaging Arrangements," By Thomas W. Greeson and Health M. Zimmerman, Reed Smith LLP, Health Lawyers Weekly, available at

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<sup>5</sup> "Advisory Opinion No. 07-10," Office of Inspector General, Department of Health and Human Services, September 27, 2007, p. 1-12.



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