



*Advising the Congress on Medicare issues*

# Exploring the in-office ancillary exception to the physician self-referral law

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# What is the physician self-referral law?

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- Prohibits physicians from referring Medicare/Medicaid patients for “designated health services” to a provider with which physician has financial relationship
- Designated health services (DHS) include clinical lab tests, imaging, physical therapy, radiation therapy, hospital, other services
- Generally prohibits physician ownership, but physicians allowed to provide most DHS in their offices (in-office ancillary exception)

# Background on the in-office ancillary exception

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- Rationale: need for quick turn-around time on crucial tests
- But applies to almost all designated health services
- 3 key rules
  - Must be performed or supervised by referring physician or another physician in group
  - Must be furnished in same building where physician provides other physician services or in a centralized location
  - Must be billed by physician or group

# Potential benefits and concerns of providing ancillary services in physician offices

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- **Benefits**
  - Access and convenience for patients
  - Ability to obtain test results faster
- **Concerns**
  - Could lead to higher overall volume through greater capacity, financial incentives
  - Several studies find that physician self-referral associated with higher volume
  - Unclear whether additional services are appropriate or contribute to improved outcomes

# Exploring in-office exception

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- Increase in imaging, pathology, therapy, and other services in physician offices
- In 2007, CMS asked for comment on whether certain services should no longer qualify for exception
  - E.g., services not needed at time of office visit to help with diagnosis or treatment
- Could explore possibilities for modifying exception

# Why use imaging to illustrate in-office exception?

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- Rapid volume growth
- Increase in physician investment in imaging equipment
- Evidence that physician self-referral associated with higher volume (MedPAC 2009)
- Other services covered by exception also growing rapidly: outpatient therapy, radiation therapy, tests

# Possibilities for modifying in-office exception

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- Exclude all imaging services from the exception
- Exclude imaging services not generally performed on same day as an office visit
- Exclude practices from performing imaging unless they are paid on capitated basis
- Although imaging used as an example, concepts could be applied to other in-office services

# Objections to limiting in-office exception

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- Would require some patients to go to other providers, which could lead to access problems and fragmented care
- Many physicians have invested in equipment, staff, and infrastructure to provide ancillary services
- Physician perception that this would interfere with practice of medicine

## Other approaches to address concerns about ownership and volume growth

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- Strengthen quality standards for providers
- Improve payment accuracy
- Measure and report physician resource use
- Single payment for services furnished during same encounter or episode (bundling or packaging)
- Encourage greater use of clinical guidelines/appropriateness criteria

# For Commissioner discussion

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- Should we do further research on in-office ancillary exception?
- Should we pursue other steps to address volume growth?