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CMS Delays Anti-Markup Rule With Respect to Purchased Interpretations and Other Services

On December 28, 2007, the Centers for Medicare and Medicaid Services (CMS) issued a final rule that delays the applicability of certain important revisions to the "anti-markup" rule as revised by the 2008 Medicare Physician Fee Schedule (MPFS). Medicare regulations currently prohibit the markup of the technical component of certain diagnostic tests that are performed by outside suppliers and billed to Medicare by a different individual or entity.

Among the significant changes to the anti-markup provisions in the MPFS are: (1) the extension of anti-markup principles to purchased interpretations (as opposed to just purchased technical components); and (2) the principle that a physician/supplier cannot mark up the cost of a test, even if performed by his or her own employees in a building that fully meets the "Stark Law" requirements, but is not performed in the "office of the billing physician or other supplier."

Specifically, the CMS has now delayed the anti-markup rule's applicability until January 1, 2009, except with respect to the technical component of a purchased diagnostic test and to any anatomic pathology diagnostic testing services furnished in space that: (1) is utilized by a physician group practice as a "centralized building" for purposes of complying with the Stark rules; and (2) does not qualify as a "same building."

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This delay avoids the potentially serious operational disruptions that would have resulted from implementation of these regulatory changes. This delay is useful for the industry to digest the proposed requirements and provide further commentary to the CMS.

The Final Rule including the delay was published on January 3, 2008, in the Federal Register (73 Fed. Reg. 404). The MPFS can be located at:

<https://www.cms.hhs.gov/PhysicianFeeSched/downloads/CMS-1385-FC.pdf>.