

## HAPPENINGS IN THE PRIVATE SECTOR

Section Editor: Gregory S. Thomas, MD, MPH  
Email: gthomas@mimg.com

Guest Author: Jeremy N. Miller, JD, Miller Health Law Group, Los Angeles, CA  
Email: jnm@millerhealthaw.com; Tel: (310) 277-9003

### Legal Aspects of Nuclear Cardiology

These are exciting times for nuclear cardiology, a rapidly expanding field which offers significant clinical and financial opportunities for cardiologists. Cardiologists are participating in nuclear medicine in a variety of ways including fixed site nuclear cameras and mobile PET systems, and through ventures with hospitals, radiologists, leasing companies, and other cardiologists. Whatever the arrangement, cardiologists need to be sure they comply with a complex and sometimes contradictory web of Medicare and state laws.

Following are brief definitions and discussions of some of the laws you need to know about:

#### Medicare Laws

##### *The “Stark” Laws*

Stark prohibits cardiologists who have a financial relationship with an “entity” (including their own group) from making referrals to the entity for Medicare-covered “designated health services,” unless an exception is available. Financial relationships include ownership and compensation arrangements. Stark-covered designated health services do not include nuclear diagnostic tests performed in a physician’s office; but nuclear tests are covered by Stark if they are performed as

inpatient or outpatient hospital services. For example, the Stark law would have to be complied with if a number of independent cardiologists and oncologists purchased a PET scanner and leased it to a hospital on a “per click” rental basis. Further, the Stark law applies if you have a financial relationship with another physician (such as a radiologist) whom you pay for interpretations of nuclear medicine scans, and you also make Stark-covered referrals to the radiologist (e.g., for CT or MRI scans) even if there is no financial relationship between you and the radiologist with respect to the Stark-covered tests.

##### *Anti-Fraud and Abuse Statute*

This federal criminal statute is violated if any recipient of your referrals for nuclear cardiology scans is compensating you, directly or indirectly, for the referrals. The penalties for a violation are quite severe, ranging from fines and exclusion from the Medicare program, to imprisonment for up to five (5) years. Potential problem areas could include the payment of excess medical director fees by a hospital to which you refer nuclear scans, below fair market value payments to radiologists to read your nuclear tests, below market equipment and space rental payments to referral recipients, and profit distributions from joint ventures which are not properly structured.

##### *Purchased Diagnostic Test Rules*

This Medicare rule prohibits cardiologists from marking up the technical component of a nuclear scan purchased from a vendor, such as a mobile service. Generally, in order to avoid the mark-up prohibition, cardiologists will have to employ and supervise the nuclear certified technician, and not “lease” the technician from the mobile service.

##### *The Reassignment Prohibition*

Subject to certain exceptions, a physician cannot assign his right to receive payments from Medicare to another physician. For example, unless an exception is available, a cardiology practice which owns a nuclear camera may not be able to bill globally to include interpretations performed by an independent radiologist in his own office. Rather, the radiologist may have to bill separately for his interpretation services.

##### *Physician Supervision Requirements*

In order to be paid by Medicare for nuclear tests, cardiologists must provide adequate supervision of the technician performing the test. Fortunately, only “general” supervision (as opposed to “direct” or “personal” supervision) is currently required for the imaging component of the nuclear diagnostic tests using the 78000 series

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of CPT codes. General supervision means that the “procedure is furnished under the physician’s overall direction and control, but the physician’s presence is not required during the performance of the procedure.” The physician does not need to be in the room or even in the office during imaging.

### ***IDTF***

Some nuclear testing arrangements will have to qualify and be certified as an Independent Diagnostic Testing Facility (IDTF) in order to bill the Medicare program.

### **State Law**

In addition to the aforementioned Medicare rules, each state will likely have its own laws with which the nuclear testing arrangement will have to comply. Some states have their own version of the federal Stark law which applies regardless of the payor. These “mini”-Stark laws can be even more troublesome than Stark itself. For example, California’s Physician Ownership and Referral Act specifically applies to nuclear medicine. Almost every state has an anti-kickback law prohibiting payments for referrals. Some states may have special licensing requirements for nuclear cardiology scans. Particularly if the

camera will be operated outside of a physician’s office or hospital setting, these licensing laws may impose stricter physician supervision requirements than the Medicare law. Other states may require that a “certificate of need” be obtained granting permission to purchase a nuclear camera.

### **Conclusion**

Before embarking on an expensive nuclear cardiology program, you should consult with a health care attorney to ensure that you will be able to pursue your clinical and financial goals in a legally compliant manner. ♦