Ancillary Services Can Add Practice Revenue, But Follow the Law

By Ericka L. Adler [7]

Adding ancillary services can be a great way to better service your patients and increase practice income. But do it the right way.

The number one complaint I hear from physician clients is that their income is shrinking. Whether it’s decreased reimbursement from Medicare/Medicaid and third-party payers, or competition and other market forces, physician practices are being forced to consider alternative means to increase practice income. Although there are many legal restrictions on physicians, with careful planning there are options available for growth.

One possibility for increased practice income is the introduction of ancillary services to an existing physicians practice. Before offering such services, consider:

1. What type of ancillaries is the practice able to recommend to its patients (i.e. within the scope of the medical practice) and does the service truly offer a benefit to patients?
2. Will the demand for the ancillary services be sufficient to substantiate the costs related to purchase and operation of the equipment, as well as demands on space and personnel?

In determining whether you can bring ancillaries into your practice, there are also legal issues to address. Under Stark laws, physicians are able to self-refer for certain designated health services (“DHS”) covered by Stark (which include such services as diagnostic testing, physical therapy, and laboratory services) by using the “In-Office Ancillary Services” exception. This exception requires that groups qualify as a “group practice” and meet billing, supervision, and location requirements. Most group practices are able to qualify and you should talk to counsel to make sure you meet the required exception.

There are always concerns about physicians overutilizing ancillary services so it’s important to audit your practice to make sure there is documented medical necessity for all tests. In addition, there are specific rules on how income from ancillary services can be distributed to referring physicians under Stark and this should be reviewed by counsel as well.

Some practices prefer to bring in outside providers who may offer laboratory testing, audiology testing, or diagnostic testing. There are different ways to approach the use of outside vendors.
A. Renting space to a vendor: You may choose to rent space to a vendor simply to make the items or services available to your patients. The vendor provides the services for the patients and bills for the technical and professional component. There is no financial benefit to the practice other than rent for the space. If the practice is in a position to refer federal patients, especially for services considered DHS under Stark, the lease relationship between the parties must be established in a manner that satisfies the relevant lease exception(s) to Stark and the Anti-Kickback Statute. There should certainly be no requirement to refer. Many times I hear from clients who do not want to bother with Stark and Anti-Kickback and elect to not allow any federal patients to be referred between the parties. This approach should be discussed with counsel since state law may place the same restrictions on non-federal patients.
B. Sometimes vendors will approach you with an alternative arrangement where they lease the practice the equipment and/or personnel it needs and the practice then bills the technical and/or professional component. Even under this arrangement, it is still advisable to assure that a written agreement providing for fair market value rent is executed. The practice will also need to make sure it can meet the in-office ancillary exception or another exception, as well as billing and other legal requirements. The U.S. Office of the Inspector General (OIG) considers arrangements where physicians expand into lines of business to which they would typically refer to be suspect. Make sure you review the structure with counsel.
Another option for physicians is the creation of a “shared facility,” where multiple physicians located in the same building co-own space and equipment to which they refer their patients for ancillary services. Each participating practice must be a solo or “group practice” and otherwise meet the Stark requirements for in-office ancillary services. This approach allows practices to share resources and to offer services to patients they could not otherwise independently afford. This is also an effective way to share resources.

Adding ancillary services to your practice can be a great way to better service your patients and to increase practice income. Just take the time in advance to make sure you are doing it the right way. For more on Ericka Adler and our other Practice Notes bloggers, click here.

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