

May 2, 2005

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# MRI and CT Centers Offer Doctors Way to Profit on Scans

**Physicians Pay a Flat Fee For Procedures, Then Bill Insurers -- at Higher Rate**

**Navigating Legal Landscape**

By **DAVID ARMSTRONG**  
 Staff Reporter of **THE WALL STREET JOURNAL**  
 May 2, 2005; Page A1

Medical imaging such as MRI and CT scanning is one of health care's fastest-growing sectors. Last October, an owner of imaging centers told doctors how they could get in on the boom.

At a meeting of cardiologists, neurologists and cancer specialists in Torrance, Calif., Imaging Solutions Inc. proposed that the doctors sign a contract to send patients to one of its centers. According to documents handed out there and physicians who attended, the deal worked this way: The center would charge doctors a flat rate per scan. Then the doctors could bill insurers at the going reimbursement rate in their area.

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For an MRI, the company would charge doctors \$375. It pegged the average reimbursement in the region at \$706.31.

After deducting the cost of having the scan interpreted, the paperwork said, the doctors would net \$234.77 from each MRI. It showed that a group practice could clear \$122,078 a year if it referred two patients a day for scans, or \$610,390 annually if it referred 10 a day. For a less-common kind of screening known as PET scans, profits would be higher: \$525,200 a year to the doctors if they made two daily referrals, or \$2.6 million annually for 10 a day.

Arrangements like this are increasingly common, say some doctors, industry officials and health-care

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lawyers. But few doctors acknowledge taking part in them, and the scanning centers that offer them typically are reluctant to identify referring doctors.

Some lawyers say the referral deals risk running afoul of federal and state laws. Others say the arrangements risk raising usage of expensive procedures at a time when U.S. medical costs already are surging.

It's a federal crime for health-care providers to compensate doctors for referrals, or for doctors to receive such compensation, when Medicare or Medicaid patients are involved. Such a ban, called an anti-kickback law, extends to all other types of patients, too, under 36 state statutes, including one in California. Some lawyers say the doctors' almost assured profits under some imaging-center contracts might be considered illegal inducement for referral.

## Screened for Profit

Some doctor groups have contracts with imaging facilities. Labeled "leases" of the facilities, the deals allow doctors to say an MRI or CT scan was done in their own offices and permit the doctors themselves to bill insurers.

### A typical arrangement:

- Doctors agree to send patients to a scanning center.
- Center charges flat rate to doctors, say \$350 a scan.
- Doctors bear certain other costs, such as \$100 for a scan reading.
- Doctors bill insurer at going rate, say \$700 and ranging up to \$1,300.

**Bottom line:** Doctors profit on each scan they order and imaging center is more likely to have steady volume.

**Problem:** Deals risk clashing with laws on payment for referral and self-referral, and may encourage overuse.

The arrangements also raise an issue of "self referral," which occurs when doctors refer patients to businesses in which they or relatives have a financial stake. Because this practice, like payment for referral, can encourage overuse of costly medical services, it is barred by a federal statute, in this case a civil one.

But the law against self-referral has exceptions, one of which says the services are all right so long as doctors do them in their own offices. Some imaging companies structure referral deals as leases, under which doctors, each time they send over a patient, are renting the scan center's facilities and employees. Imaging firms appear to be establishing a framework to argue that doctors' offices temporarily include the imaging center, say some health-care lawyers.

Imaging Solutions documents distributed at the gathering in Torrance characterized its contract as a "per use, non-recourse lease agreement." Referral deals labeled leases "have spread like wildfire," Anne Haule, a Chicago health-care lawyer, wrote last June in a newsletter called Diagnostic Imaging Intelligence.

Without citing any specific provider, she said the arrangements posed significant risk of violating laws against payment for

referral. She also wrote that there could be fraud if doctors were seen as falsely claiming to have provided a service within their own offices. In an interview, Ms. Haule said she advises clients to avoid such arrangements.

## 'Pushing the Envelope'

Another health-care attorney, Jeremy Miller of Los Angeles, said that companies offering some of the leasing deals are "pushing the envelope" and that doctors who sign up are "definitely taking a risk." The contracts' legality appears not to have been addressed in court. One case in Georgia, alleging that a deal violated a state self-referral law, was settled without a judicial ruling.

The chief executive of Imaging Solutions, Michael Hofer, said the kind of arrangement his company offered

in Torrance represents about 20% of its business. "We never do it unless we absolutely go to a lawyer and make sure it is OK," said Mr. Hofer, whose company is based in Fargo, N.D.

Asked about the projections for doctors' profits, the CEO said the numbers were provided by Dan Eberhardt, whom he described as "an agent who works for" equipment makers and brings deals for Imaging Solutions to consider. Mr. Eberhardt, however, called himself an executive of Imaging Solutions, in a document on its letterhead that was distributed at the doctors' meeting. Reached by calling Imaging Solutions, Mr. Eberhardt hung up when asked about the documents. Reached again weeks later, he directed calls to Mr. Hofer.

Some companies decline to offer referral deals, among them HealthSouth Corp. in Birmingham, Ala. In such deals, the doctor gets a discount and "turns around and bills at a marked-up price," said Karen Davis, head of HealthSouth's diagnostic division. "He takes a quick margin of \$300 to \$400 for each one. What part of that doesn't feel like a kickback?"

While the U.S. Health and Human Services Department, which oversees Medicare and Medicaid, hasn't dealt with scanning contracts, it warned recently about a similar laboratory arrangement. A pathology lab had proposed that doctors order services from it -- paying either a per-use fee or a flat monthly charge -- and then directly bill insurers.

This lab "may be offering the Physician Groups impermissible remuneration" by giving them a chance to bill Medicare for more than what they pay the lab, said an advisory that the HHS inspector general published. Without naming the lab, it said that HHS "could potentially impose administrative sanctions...under the anti-kickback statute."

Scanning costs are Medicare's fastest-growing item. They rose at three times the rate of other medical services from 1999 to 2002 and popped a further 16% in 2003. The total spent in the U.S. on imaging services and new machines will reach \$100 billion this year, up \$20 billion in two years, consulting firm Booz Allen Hamilton estimates.

One reason for the boom is medical scans' growing ability to detect health conditions, reducing the need for diagnostic surgery. But another factor, some researchers believe, is the incentive some doctors have to order more scans, either because they've installed a machine in their own offices or because they have one of the lease contracts with imaging centers. Scanning centers are offering these contracts at a time when many doctors see their incomes under pressure from managed care and some are looking for new revenue.

"Utilization goes through the roof" when doctors have a financial stake in providing imaging tests, said Donald Ryan, head of CareCore National Inc. in Wappingers Falls, N.Y., which analyzes imaging claims for insurers to help them control costs.

Contracts between imaging centers and doctors are hard to detect from the claims Mr. Ryan sees. But he said he documented that a neurology practice in Nassau County, N.Y., had a lease deal with an imaging center -- and that its doctors ordered MRI brain scans 47% more frequently than other doctors. Mr. Ryan said the practice, which he declined to name, ordered MRIs for 26 of every 100 patients in 2003, compared with 17.6 per 100 for other neurologists in the county.

One imaging company's standard referral agreement with doctors was disclosed in court two years ago. Medquest Associates Inc.'s contract said patients would be scanned at one of its facilities, but the doctors

would bill the insurer.

The fee schedule showed Medquest would charge doctors \$350 per patient for a CT scan. The suggested sum for doctors to bill insurers was \$650 to \$850, depending on what body part was scanned. The documents were introduced in Georgia state court in Atlanta, in a civil suit filed by a patient alleging a violation of the state's self-referral law. The case was settled on undisclosed terms.

A Medquest internal note suggested that its salespeople tell doctors to advise insurers that the doctors had begun providing scans on their own. "Experience has shown us that it works best" if doctors are told to remove Medquest's name from the price schedule before submitting it to insurers, said the note, which was also filed in court.

The note, marked "confidential," added: "We have yet to see a group that has not been very pleased when they see the actual numbers from their payors."

A spokesman for Medquest, of Alpharetta, Ga., said the document didn't go through proper channels and was removed from circulation after senior management learned about it. He called the note "an overzealous attempt" to promote contracts and said that the line about doctors being pleased with their reimbursements was "something that shouldn't have been said and not the kind of thing the company condones." The spokesman added that Medquest's contracts with doctors have been declining in number and make up less than 10% of its business.

Still, as many as 25,000 patients in Georgia have been referred to Medquest's facilities under referral contracts, said Medquest co-founder Gene Venesky in a court affidavit June 20, 2003. He said the company was "repeatedly advised by several different attorneys" that the contracts are legal.

(Mr. Venesky and two other officials resigned last week amid an accounting inquiry at the company, which is controlled by an arm of **J.P. Morgan Chase & Co.** See adjoining article.)

Since insurers pay the same for a scan no matter who files the bill, it might seem that imaging firms giving big discounts to doctors would be leaving a lot of money on the table. Why charge a doctor \$350 for a scan when an insurer would reimburse you \$700 for it? But locking in usage with a doctor group provides something that imaging centers want: volume.

Insurers, meanwhile, "rarely know anything about" the arrangements, says Cherrill Farnsworth, CEO of HealthHelp Inc., a Houston firm that helps insurers manage radiology benefits.

Helping to keep the practice hidden is the disinclination of all parties to talk about reimbursement levels, for competitive reasons. Insurers, for instance, don't want doctor groups and imaging centers to know that the insurer may be giving a better deal to some than to others -- depending on how badly it needs them in its network. The insurers bargain with providers over reimbursement levels.

### **Details of the Deal**

The specifics of one imaging center's referral deal with doctors were spelled out in a contract filed with Massachusetts regulators. The agreement was between **Alliance Imaging Inc.** of Anaheim, Calif., and a 45-

doctor group in North Dartmouth, Mass., called Hawthorn Medical Associates. Alliance put one of its MRI machines in one of the doctors' buildings. Alliance pays rent to the doctors for the space, and the doctors agree to send most MRI patients to that machine.

The doctors pay \$245 to Alliance Imaging for each MRI they order and then bill insurers for it themselves. Hawthorn says it also has other costs, such as \$75 to \$100 for a radiologist to interpret each scan, plus scanner supplies, maintenance and the salary of a part-time and full-time technician. Still, it appears the doctors in the Hawthorn group collect at least a couple of hundred dollars above their costs for each scan they prescribe.

For instance, Harvard Pilgrim Health Care Inc., a health-maintenance organization in the area, reimburses about \$610 to \$712 for each lower-back MRI, and \$1,343 for an MRI brain scan. Hawthorn doctors, who are providers within this HMO's network, are reimbursed in line with its the HMO's average, says Hawthorn's medical director, William Caplan.

Dr. Caplan said the medical practice makes money from its deal with Alliance Imaging, but "only a little bit -- no one is getting rich off this." He also said that the lawyers had cleared the arrangement and that it doesn't lead to overuse of scans. He rejected the idea that "doctors run up utilization to make money." Harvard Pilgrim declined to comment.

Alliance Imaging says its contracts with doctors represent a small slice of its business and are entered into cautiously. "Every single deal like this is reviewed" by outside and internal lawyers, said the company's chief executive, Paul Viviano. "They bless them before we begin dreaming of such a relationship. They view this as in compliance" with referral laws.

A company called Integrated Diagnostic Centers Inc. says it has signed more than 1,000 doctors to lease deals for its six scanning centers in Texas, Colorado and Nevada. This firm permits doctors to bill insurers directly only in the case of non-Medicare patients, to avoid running afoul of the federal law barring payment for referrals, said its CEO, John Allen.

In addition, instead of paying a price per scan, the doctors book a set number of hours on a scanner per week, which they must pay for even if they don't send enough patients. This arrangement adds an element of risk that helps make sure there is no violation of anti-kickback laws, Mr. Allen said.

He estimated that doctors who use all of the scanner time they book net about \$150 to \$200 per patient. He said he doesn't see physicians ordering extra scans after they sign a lease deal.

On IDC's Web site, Las Vegas orthopedist John Thalgott, whose practice has a contract with the imaging center, calls the financial arrangement a "win-win." Dr. Thalgott says in an interview that profits from imaging represent less than 5% of his income.

Matthew J. McMahon, a Las Vegas cardiologist, says his practice also has a contract with IDC. In an interview, Dr. McMahon says the "benefit to the business is plain and simple: it is an economic advantage. Medical imaging is profitable. This is another revenue stream."

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