

CMS Clarifies Definition of Mobile Independent Diagnostic Testing Facility (IDTF) and Rules on Leasing and Sharing of Practice Locations with Medicare Enrolled Physicians

*By Gilbert F. Ganucheau, Esq. and
Lindsey E. Surratt, Esq.*

The Department of Health and Human Services Departmental Appeals Board (“DAB”), Appellate Division, issued a final decision on November 22, 2010, that clarifies the meaning of a “mobile IDTF,” and interprets IDTF requirements relating to the leasing of space as well as “sharing a practice location” with another Medicare-enrolled individual or organization. CMS regulations for IDTFs have resulted in confusion concerning whether certain delivery structures result in an IDTF being “mobile” or “fixed-based.” For the first time, the DAB has explicitly stated that two types of mobile IDTFs exist: (i) those which are “portable units” and (ii) those which are a “mobile facility or unit.” These two types of mobile IDTFs differ in that a “portable unit” mobile IDTF involves the transportation of equipment to different fixed locations for diagnostic testing, while a “mobile facility or unit” refers to a converted, equipped, and licensed mobile home, trailer, or other large vehicle which travels to a location for the treatment of patients inside the vehicle.

The DAB further clarified the CMS regulations which imposed “certification standards” on IDTFs, particularly those set forth in 42 C.F.R. § 410.33(15)(g) which prohibit a fixed-base IDTFs from sharing a “practice location” with another Medicare-enrolled individual or organization. While CMS did not define the term “practice location” in the regulations, CMS did provide some guidance as to the meaning of this term in the Preamble to the Final Rule. The DAB decision provides that an IDTF may share space with another Medicare-enrolled individual or organization, but draws a clear line between the sharing of clinical space and non-clinical space. Specifically, the sharing of common hallways, waiting rooms, and reception areas is permissible. However, IDTFs remain prohibited from sharing clinical space, such as the same suite in an office building, or diagnostic testing equipment with another Medicare-enrolled individual or organization.

IMPORTANT NOTICE:

The article in this update has been prepared by Kathleen L. DeBruhl & Associates, L.L.C., for informational purposes only. Nothing herein is intended to constitute legal advice.

This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Readers should not act upon this information without seeking professional counsel.

CMS’ IDTF “certification standards” also prohibit a fixed-base IDTF from leasing space to another Medicare-enrolled individual or organization, but there is no restriction on a fixed-base IDTF wishing to lease or sublease space from another Medicare-enrolled individual or organization. The DAB decision solidified this point, stating that when an IDTF leases “from” a doctor, “the prohibition against leasing or subleasing “to” another Medicare-enrolled individual or organization simply does not apply.” This stance should provide assurance to physicians seeking to lease or sublease space to an IDTF, as well as to IDTFs in considering a lease of space from another Medicare-enrolled individual or organization.

Proactive Medical, L.L.C. v. Centers for Medicare and Medicaid Services; DAB CR2150, Board Decision No. 2346, November 22, 2010.

For more information, please contact:

Kathleen L. DeBruhl: kdebruhl@md-law.com

Gilbert F. Ganucheau: gganucheau@md-law.com

Lindsey E. Surratt: lsurratt@md-law.com