

## Compliance Today – September 2019 Stark, diagnostic testing, and group compensation

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Medicare's rules on diagnostic testing can be dizzying. If your practice does any diagnostic testing, you must also grapple with the intersection of Stark and Medicare's rules regarding diagnostic testing. This article attempts to shed light on the connections and provide practical advice for compliance.

### The basics

Before diving into the Stark Law and its implications, it is important to understand basic Medicare concepts relating to diagnostic testing. Under Medicare's rules, "diagnostic testing" means all diagnostic X-rays, laboratory tests, and other diagnostic tests. (This article does not address clinical laboratory services, which are paid under the Clinical Laboratory Fee Schedule.)

Only a physician or practitioner, including some non-physician practitioners (NPPs), who has a treatment relationship with the patient may order the test. Treating physicians include MDs and doctors of osteopathic medicine (DOs), as well as dentists and dental surgeons, podiatrists, and optometrists. NPPs who can order diagnostic tests include clinical nurse specialists, clinical psychologists, physical therapists, occupational therapists, speech language therapists, audiologists, certified social workers, certified nurse midwives, certified registered nurse anesthetists, and anesthesia assistants.

Although Medicare's rules generally require written orders for services, an order for a diagnostic test may be: (1) a written document signed by the treating physician/practitioner that is hand delivered, mailed, or faxed to the testing entity; (2) a telephone call by the treating physician/practitioner or their office to the testing entity; or (3) an email from the treating physician/practitioner or their office to the testing entity. Orders for diagnostic tests need not be signed, but the treating physician/practitioner must indicate in the medical record an intent that the test be performed.

Under Medicare's reimbursement rules, most diagnostic tests may be interpreted by a physician or qualified NPP. The technical component (TC) of a diagnostic test may be performed by any qualified physician or NPP, as well as a qualified technician under appropriate supervision.

### Physician supervision

Physicians and qualified NPPs are paid for personally performing diagnostic test components. However, for TCs, Medicare permits only physicians to supervise someone else performing the test. The TC is paid at 100% of the supervising physician's fee schedule rate for a technician's performance of the TC.

There are three levels of supervision, which the rules specify apply to each test:

**General supervision:** The physician provides overall direction for performing the test and is responsible for training the non-physician personnel who perform the test as well as the maintenance of the equipment used.

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The supervising physician need not be physically present when the test is performed.

**Direct supervision:** The physician must be in the office suite and immediately available to provide assistance and direction throughout the procedure, but need not be in the same room when the test is performed.

**Personal supervision:** The physician must be in the same room with the patient when the test is performed.

A test may be supervised at a higher level of supervision than required (e.g., a test requiring direct supervision may be performed under personal supervision, but not vice versa). The required level of supervision for each test can be found through the Medicare Physician Fee Schedule Lookup Tool.<sup>[1]</sup> The column listing “PHYS SUPR” includes a number from 1 to 3, which corresponds with general (1), direct (2), or personal (3) supervision.<sup>[2]</sup>

Although the language surrounding supervision may sound similar to the language of Medicare’s “incident-to” billing rules, as of 2007, diagnostic tests may never be billed incident-to. This can create some wrinkles for physician group practices with respect to compensation, due to restrictions under Stark.

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