



## Curbside Consult

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**Q:** *I am a member of a group practice that leases the use of an MRI facility for a fixed monthly fee. I also contract with a radiologist outside of my group to provide the interpretation of the test. My physician group then bills an insurance company for the technical and professional components of the service. The group does not bill the Medicare or Medicaid programs. Is the group violating the law?*

**A:** Yes. The type of arrangement that you described is commonly referred to as a "block lease." If your group was billing the Medicare or Medicaid programs for this service you would likely be violating the Federal Patient Self-Referral Act (the "Stark Law") and the Medicare prohibition on marking up diagnostic tests. Many providers are under the mistaken belief that if they are not billing a federal program like Medicare, they do not have to comply with laws governing this type of

relationship. In Florida, we have state laws such as the Patient Brokering Act and prohibitions on fee-splitting, which prohibit this type of block lease arrangement.

In a recent case entitled *Prosper Diagnostic Center Inc. v. Allstate Insurance Company*, a Florida appellate court found that when a provider enters into an agreement of this kind and performs neither the professional nor the technical component of an MRI or similar test, the provider is not entitled to any compensation for services because the provider has not actually performed any medical services. The court found the facts in *Prosper* identical to a prior case, *Medical Management Group of Orlando, Inc. v. State Farm Mutual Auto Insurance Co.*, where a medical management group performed neither the professional nor the technical component of MRI services and contracted out the MRI services to a third party pursuant to a lease agreement.

The court in *Prosper* thought that this case was different than another case, *Regional MRI of Orlando, Inc. v. Nationwide Mutual Fire Insurance Co.* In *Regional*, the entity was properly compensated when it performed the technical component of an MRI scan, but sent the scan out to a radiologist for the professional interpretation.

The diagnostic center in *Prosper* also

contended that the Patient Brokering Act was unconstitutional. This issue was recently reviewed by the *Florida Supreme Court in State v. Rubio*. The Florida Supreme Court found that the Patient Brokering Act was constitutional. The court determined that since the Patient Brokering Act contained safe harbors or exceptions for those payment practices that were not prohibited by Federal Law, the law was constitutional.

The court in *Prosper* found that block lease agreements such as these are merely fee splitting schemes that improperly compensate for referrals, which is a violation of both the Patient Brokering Act and Florida's prohibition on fee-splitting. It is important for physicians to remember that they or another bona fide member of their group must administer the test or provide the professional component, in order to be properly compensated by an insurance company.

Otherwise, they risk more than just the failure to be paid for the service. The Patient Brokering Act is a criminal statute and the physician could lose his or her medical license for violating the fee-splitting prohibition.

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FLORIDA MEDICAL BUSINESS

December 20, 2005 - January 16, 2006

[www.FMBnews.com](http://www.FMBnews.com)

Volume 19 / Number 24