



# Rule Prohibits Rent Collection from Labs

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New Jersey physicians are now prohibited from collecting rent from clinical laboratories that operate collection stations in the physicians' offices under a new regulation adopted recently by the Department of Health and Senior Services.

Many operators of clinical laboratories set up collection stations in physicians' offices as a convenience for patients, who then can provide lab specimens without having to leave the doctor's office. Laboratory specimens are collected at the collection station in the physician's office and then sent to a central laboratory for analysis. Prior to the adoption of the new rule, the laboratory would pay the physician a rental fee in exchange for operating the collection station. This new rule ends rental payments and drastically alters the parameters by which labs can operate such a station.

The rule, which went into effect on July 19, does not allow for grandfathering of existing arrangements between labs and physicians' offices. Laboratories that entered into long-term leases in an attempt to circumvent the rule will have to stop paying rent and other remuneration or be subject to enforcement action. As a result, immediate compliance is required.

According to the DHSS, the rule was in response to reports that collection station rental agreements between labs and physicians exceeded fair market value and influenced patients' selection of laboratory services. In issuing the ruling, DHSS said that it has "no effective means of assuring that these rental agreements do not exceed fair market value."<sup>1</sup> DHSS said the new rule is intended to ensure that New Jersey's licensed clinical laboratories operate under the same standards and practices to eliminate any perceived or actual conflict of interest or abuse. Further, DHSS said that the payment of rent or the offer of goods or services by laboratories has unduly influenced the selection of laboratories to operate collection stations in physician offices. The new rule places all laboratories on a level playing field with regard to prohibiting payments or other remuneration

to physicians, which should place the laboratories that provide superior service to patients and physicians at an advantage. In its Notice of Adoption, DHSS advised that the funds currently paid for rent and other goods or services should not be available to enhance customer service for patients.<sup>1</sup>

Under the new rule, a lab that operates a collection station in a physician's office is now limited to collecting specimens only from patients of the physician's office in which the collection station is located, and must comply with the following provisions:

- No reimbursement, fees, rent or any type of direct or indirect payment may be made to the physician by the clinical laboratory.
- Employees of the lab are not permitted to perform services for the physician that are normally the responsibility of the physician's staff, such as taking patient vital signs or other nursing functions, drawing specimens or performing clerical services.
- The clinical laboratory and physician's office may not share employees or independent contractors.
- Except as necessary for the reporting of test results, the lab may not provide supplies, waste disposal services, test kits for the physician's use, electronic medical records systems or other goods or services to the physician.
- The collection station must be licensed by DHSS and the license must be prominently displayed in the collection station area.
- A copy of the signed lease or agreement between the physician and clinical laboratory for the operation of the collection station must be made available to DHSS upon request.

Although a lab may not pay rent to a physician for space for a collection station, the parties may still have a lease agreement in place and a copy of that agreement must be provided to DHSS upon request. While the rule does not require a written lease agreement, DHSS stated that it shall "encourage laboratories operating collection stations in physician offices to have a written agreement that outlines

the terms of the space arrangement and delineates the laboratory's responsibilities for compliance with the proposed rule."<sup>1</sup>

On the other hand, the new rule does not prohibit laboratories from operating a patient service center in a building owned by physicians provided that the patient service center is not located in a physician's office. Also the patient service center must be:

- Open to and serve the general public, and not restricted to serving one or more specific medical practices;
- Located in a freestanding building or occupy a space in a public access building;
- Accessed directly through an exterior building entrance or from a public access foyer or hallway that clearly identifies the name of the laboratory and the days and hours of operation;
- Not accessible through a physician's office;
- Identified to the public by clearly visible signage on the exterior of the building and listed in the building on-site directory and advertisements of the laboratory must list the address and numbers of the patient service center;
- Self-contained with regard to all aspects of operations including the waiting room, reception area, phlebotomy rooms, restroom facilities and specimen and supply storage areas, except that the patient service center may share a common waiting area that is used by all tenants of a building, provided that two or more tenants renting separate office spaces are not referring physicians or health care providers; and
- A copy of the signed lease between the lab and physician's office is made available to DHSS upon request. ■

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1. 42 NJR 1530(a)