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CMS Imposes Mandatory Disclosure of Hospital/Physician Financial Relationships

Beginning in September 2007, the Centers for Medicare & Medicaid (CMS) will require hospitals to report on their relationships with physicians and their immediate family members. Initially 500 hospitals will be required to make disclosures. Later, reporting will be mandated for "all Medicare participating hospitals." The purpose of the disclosure is to allow CMS to scrutinize physician/hospital arrangements for compliance with the Stark law.

Hospitals that have not submitted their physician relationships and contracting process to scrutiny under their compliance programs should do so now.

CMS's action to put hospital/physician relationships under a magnifying glass resulted from a congressional directive to the Department of Health and Human Services in Section 5006 of the Deficit Reduction Act, enacted in February 2006, to address issues related to physician investment in specialty hospitals. CMS sought to learn more about the issue by sending a voluntary survey instrument to 500 hospitals, both specialty and non-specialty hospitals alike. CMS became alarmed when 290 of those hospitals failed to submit information in response to the voluntary survey. "Because we are unable to determine whether those hospitals that did not respond to the Deficit Reduction Act (DRA) survey questions on investment and compensation relationships had tainted relationships, or whether their non-response was for other reasons..." CMS decided to take action. The 290 hospitals that did not respond will be subject to the new mandatory disclosure, along with 210 other hospitals selected by CMS.

The Disclosure of Financial Relationships Process

CMS will issue a new mandatory disclosure instrument, called the "Disclosure of Financial Relationships Report" (DFRR). It consists of six detailed work sheets collecting information regarding:

- The hospital's general characteristics
- A complete disclosure of all hospital ownership interests (both physician and non-physician)
- A disclosure by *all investing physicians* concerning their ownership interests (including loans or loan guarantees)

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- A disclosure of all leases or “under arrangements” relationships with physicians or their family members,
- A disclosure of virtually **all other compensation arrangements** between physicians and the hospital, including leases, medical director agreements, on-call stipends, and even charitable donations and non-monetary compensation arrangements, including birthday presents and tickets to sporting events

The form also requires supporting documentation to be provided, including copies of written agreements between the hospital and its physicians and verification of the fair market value of certain arrangements.

Recipients of the form will be required to complete it in hard copy, certify its accuracy by the Chief Executive Officer (CEO), Chief Financial Officer (CFO), or other senior officer of the hospital, and return it to CMS *within 45 days of receipt by e-mail*. Hospitals that fail to meet the prescribed time frame will be subject to civil money penalties of up to \$10,000 for each day the report is delinquent.

The Significance of DFRR

CMS is clear that it will use the information collected from the DFRR to analyze physician investment and compensation arrangements with hospitals for compliance with the Stark law. It will accomplish this review through its relationship with Payment Safeguard Contractors (PSC). Although CMS promises to protect the DFRRs from disclosure under the Freedom of Information Act, it acknowledges that the information may be shared with other “federal agencies and Congressional Committees.” **Hospitals, therefore, should expect to see more enforcement of Stark as a result of the DFRR process.**

CMS also commits to use this first DFRR process to propose a regular financial disclosure process that would apply to all Medicare participating hospitals in the future. This means that, even if a hospital dodges the bullet in this first go-around, it can expect to be required to comply once the general reporting process is released.

In instituting the DFRR, CMS is reversing its 2004 position to stay away from a sweeping reporting requirement. CMS originally had proposed such a requirement in the 1998 proposed Stark regulations, but backed away from it when those regulations were finalized in 2004, acknowledging that a reporting requirement of this magnitude “would not be particularly helpful to [CMS]” and that “CMS and its contractors would be overwhelmed by the number of reports and financial relationships that would need to be analyzed.” 69 Fed. Reg. 16125 (March 26, 2004). It is also noteworthy that the directive from Congress in the DRA was limited to **physician investment in specialty hospitals** whereas CMS now plans to focus on all formal relationships and all hospitals.

Seeking information about all financial relationships with physicians and their family members places an enormous burden on hospitals. It means that they now must have systems to track physician relationships and processes to ensure that each relationship complies with Stark. CMS estimates that it will take approximately four hours to complete the DFRR, however, this estimate seems exceedingly unrealistic given that the DFRR seeks financial information and supporting documentation regarding virtually all financial relationships between a hospital and its physicians (and their immediate family members).