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CMS Proposes Mandatory Disclosure of Financial Relationships Between Hospitals and Physicians

The Centers for Medicare and Medicaid Services (CMS) recently issued a notice of proposed information collection regarding a new form called the Disclosure of Financial Relationships Report (DFRR) and is accepting comments on the form until July 17, 2007.¹

Hospitals, physicians, and other health care providers and suppliers should take note because CMS will use the DFRR to survey hospitals concerning their ownership, investment, and compensation arrangements with physicians so that it can analyze their compliance with the Stark law.

Purpose of the DFRR

The survey is part of CMS's strategic plan for addressing key issues relating to physician investment in specialty hospitals, which it implemented pursuant to Section 5006 of the Deficit Reduction Act of 2005 (DRA).² As part of that plan, CMS conducted a voluntary survey designed "to obtain a more complete depiction of the proportionality of physician investment in specialty hospitals." In 2006, CMS sent the DRA survey to 130 specialty hospitals and 322 competitor general acute care hospitals, and, of these hospitals, 290 failed to respond or submitted incomplete answers to questions regarding their financial relationships with physician investors.

Because CMS did not receive enough information through the voluntary DRA survey to analyze the proportionality of physician investments in specialty hospitals, CMS is now proposing the mandatory DFRR to facilitate collection of the additional information. CMS will use the information solicited through the DFRR to analyze investment interests and compensation arrangements between hospitals and physician investors for compliance with the Stark law. However, CMS has made clear that

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this use of the DFRR “is the first step toward implementing a regular financial disclosure process that would apply to all Medicare participating hospitals.” Thus, once the Office of Management and Budget clears the DFRR form, CMS may use it for this wider purpose.

DFRR Recipients

Once finalized, CMS will distribute the DFRR to the 290 hospitals that did not complete the voluntary DRA survey because it could not determine whether those hospitals had tainted investment and other relationships or whether they failed to respond for other reasons.³ The list of hospitals that did not respond to the voluntary DRA survey is available [here](#). CMS will choose an additional 210 hospitals for a total initial sample of 500 hospitals.

Information Solicited in the DFRR

The DFRR will require hospitals to disclose their financial relationships with physician owners and investors, including compensation arrangements. Specifically, hospitals must disclose detailed information regarding the following:

- hospital ownership and physician investments, including direct ownership information for each physician owner/investor and loans and loan guarantees from the hospital to physician owners/investors;
- leases or under arrangements; and
- compensation arrangements with physicians regarding space and equipment rentals, personal service arrangements and recruitment.

In many cases, the DFRR requires reporting of information by individual physician and asks for the physician’s NPI or UPIN number. Further, detailed supporting documentation must accompany the hospital’s response. For example, hospitals must furnish their audited financial statements and, for each category of compensation arrangement for which disclosure is required, all written agreements in effect in 2006. Hospitals also must submit any explanation of all charitable donations received from physicians, including each physician’s name and NPI or UPIN number.

DFRR Submission Requirements

The chief financial officer, chief executive officer, or other appropriate official must sign a certification statement to verify the accuracy of the information reported in the DFRR. CMS will not accept the DFRR unless the certification statement is properly

completed and signed by an appropriate hospital official.

CMS has concluded that electronic completion and submission of the DFRR is not feasible. Hospital respondents therefore must submit a hardcopy of the completed DFRR to CMS along with copies of the agreements detailed therein.

Timing and Consequences for Noncompliance

CMS has not explicitly stated when it will distribute the DFRR to the selected hospitals. The Federal Register indicates, however, that CMS will accept comments regarding the proposed information collection through July 17, 2007, and it likely will distribute the DFRR via email shortly thereafter. Recipients will have 45 days to complete and submit the DFRR. If a hospital fails to submit a completed DFRR within the specified period, it is subject to a civil monetary penalty of up to \$10,000 per day following the deadline until CMS receives the DFRR. Given that the program safeguard contractor hired to compile and review each DFRR must complete this task by September 30, 2007, the process apparently will move quickly.

Implications

Because the DFRR will require hospitals to disclose a substantial amount of information regarding their contractual relationships with physicians, it could pose a significant administrative burden on the respondents. CMS estimates that the DFRR will take four hours to complete, but for most hospitals this estimate appears unrealistic given that many do not have an effective system in place for managing their contracts or do not maintain all of their contracts in one location. In addition to evaluating current contract management procedures, hospitals also should consider the actual administrative burden posed by the DFRR and consider submitting comments—whether individually or as part of a group—on CMS’s administrative burden estimate.

The DFRR represents a significant shift in CMS’s monitoring of Stark law compliance and therefore could signal heightened risk for affected parties. Hospitals and physicians should carefully evaluate their contractual relationships to ensure compliance with the Stark law.

In addition, the DFRR could subject hospitals to further legal risks beyond the Stark law. For example, if the information provided is incomplete or inaccurate, the certification requirement could result in charges regarding false statements. Hospitals that receive the DFRR should use their best efforts to compile and disclose the requested information.

Finally, given CMS’s stated intention to use this form as a “regular

financial disclosure process that would apply to all Medicare participating hospitals,” CMS’s next step may be to use this or a similar form to verify Stark law compliance by all providers (*i.e.*, providers that furnish designated health services).

Conclusion

In preparation for the DFRR, hospitals should evaluate their contract management systems and examine all contracts with physician owners/investors to ensure compliance with the Stark law. In addition, providers should consider submitting comments, which are due no later than July 17, 2007, on concerns regarding:

- the administrative burden posed by the DFRR;
- the wider intended use of the DFRR;
- the legal risks posed by the certification requirement.

¹ Agency Information Collection Activities: Proposed Collection; Comment Request, 72 Fed. Reg. 28056 (May 18, 2007); more information is available [here](#).

² Deficit Reduction Act of 2005, § 5006, Pub. L. No. 109-171, 120 Stat. 4 (2006).

³ Centers for Medicare and Medicaid Services, Supporting Statement—Center for Medicare and Medicaid Services Disclosure of Financial Relationships Report, at 1 (May 18, 2007).

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