

HEALTH CARE LAW UPDATE

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Hospital Law Issues

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CMS Requires Disclosure from Hospitals In Connection with Stark Law Enforcement

The Centers for Medicare and Medicaid Services ("CMS") recently announced that in September 2007, it will be sending out a "Disclosure of Financial Relationships Report" ("DFRR") form to 500 hospitals.

Hospitals that receive the DFRR form will be required to complete the form within 45 days, setting forth various information about the investment, ownership and compensation relationships with physicians. CMS will use the information to assess compliance with and to enforce the Stark law.

1. The Process

CMS is authorized by the Stark law and regulations to require hospitals to disclose various information regarding their relationships with physicians. Nearly 300 hospitals did not respond to a voluntary survey conducted by CMS during 2006, and thus, CMS is now requiring 500 hospitals to respond to this mandatory survey.

Hospitals that fail timely to disclose the requested information will be subject to civil monetary penalties of up to \$10,000 per day beyond the deadline for responding.

Each DFRR form must be completed and returned along with a "Certification Statement," signed by the hospital's CEO, CFO or comparable senior executive officer, certifying as to the accuracy of the information disclosed.

2. Information to be Disclosed

The following information must be disclosed on the DFRR form:

(a) Investment/Ownership Interests. Various worksheets on the DFRR form are geared to obtaining information regarding investment and ownership interests in the hospital, including amount of capital invested, ownership percentage and return on investment. Information also must be provided regarding any loans or guarantees provided by the hospital on behalf of physician investors.

(b) Leases and Under Arrangements. Another worksheet requires hospitals to disclose if they are the sole owners of their land, buildings and capital equipment. If the answer is "no", then various information must be listed regarding each relevant lease or contract between the hospital and third parties in effect during 2006, including the terms of the lease or contract, whether a security interest is involved, and how the fair market value (FMV) for the arrangement was determined.

Copies of the relevant leases or other contracts, as well as any documentation supporting the determination of the FMV of the arrangement, must be attached and submitted along with the completed DFRR form and certification.

(c) Compensation Arrangements with Physicians. The final worksheet requires disclosure of all compensation

arrangements between the hospital and physicians during 2006. This worksheet has separate columns for disclosing arrangements with physicians involving:

- (i) rental of office space;
- (ii) rental of equipment;
- (iii) personal services arrangements; and
- (iv) physician recruitment transactions.

For each relevant arrangement, the name of the physician involved and their NPI/UPIN must be listed, and a copy of each written agreement must be enclosed.

This worksheet ends with five questions seeking information about any other compensation arrangements, such as:

- (i) isolated transactions;
- (ii) remuneration to physicians unrelated to designated health services;
- (iii) payments by physicians to hospitals for items or services;
- (iv) charitable donations by physicians to hospitals; and
- (v) non-monetary compensation or medical staff benefits that exceed published limits.

3. Significance and Practical Recommendations

This development is significant because it demonstrates CMS' resolve to more aggressively enforce the Stark Law.

Every hospital should be prepared to complete the DFRR form within 45 days - - even if it is not included in the first wave of 500 hospitals to receive the form this Fall. CMS may broaden its initiative to include other hospitals in the future.

If your hospital does not have information regarding its relationships with physicians in an organized database or other centralized file, such organizational efforts should be a top priority for your compliance department. Any such organized compilation should provide easy access to the following:

- (a) A listing of each physician arrangement by name of physician or physician group, or by hospital department;
- (b) A current copy of each signed contract reflecting the arrangement;
- (c) Each physician's NPI/UPIN;
- (d) A copy of documentation supporting the fair market value of the arrangement (which could be a written report from a valuation consultant, or internally compiled written data, calculations, or otherwise); and
- (e) The relevant Stark Law exception for which the arrangement qualifies.

The announcement of the DFRR form is an indication that more substantial Stark Law enforcement may be on the horizon.

Hospitals must be organized and prepared to demonstrate their compliance with the Stark Law relatively quickly, so as to avoid the imposition of substantial civil monetary penalties - - both for late responses to requests for disclosures, and even more so, with respect to any non-compliant arrangements with physicians.

We send these Updates to our clients and friends to provide information on recent developments in the law. The Updates, however, should not be relied on for legal advice in any particular matter. If you would like additional information, please contact: Gary W. Herschman at 973-643-5783 or Anjana D. Patel at 973-643-5097.

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