

ARE HOSPITALS AND PHYSICIANS READY TO DISCLOSE FINANCIAL RELATIONSHIPS?

Approximately 10% of the hospitals in the United States will soon be notified by the Center for Medicare and Medicaid Services (CMS) regarding the completion of its mandatory Stark Contract Audit Tool, known as the Disclosure of Financial Relationships Report (DFFR).

The DFFR was originally proposed in 2007 to determine whether hospitals were in compliance with Federal Physician Self Referral Law, commonly known as Stark, by seeking information about their physician financial relationships. While this effort has been postponed due to the cumbersome reporting requirements required as a part of the DFFR, given the focus on healthcare reform by the current administration, expected that this effort will move forward and those hospitals which are notified to complete the DFFR will have 60 days in which to respond or face civil monetary penalties of up to \$10,000 for each day the response is late.

Other than employment agreements, a hospital must identify every financial relationship it has with a physician or a member of the physicians immediate family, including direct and indirect investments, physician recruiting and professional services agreements as well as medical office building leases during the cost reporting years ending in 2006. Not only must the hospital complete the worksheets and sign a certification, but the hospital will be required to provide copies of all relevant documents. In particular, this list includes the following:

- Physician employment agreements
- Physician recruiting agreements
- Medical director agreements
- Medical office building leases
- Professional services agreements
- Medical staff benefits
- Equipment leases
- Payments made by physicians for initial capital investments and subsequent capital costs for direct and indirect investments

Needless to say, for those hospitals who will be required to complete the DFFR, this will be an extremely complicated process. All hospitals are encouraged to prepare for this type of disclosure with respect to hospital/physician relationships. Indeed, hospitals are encouraged to review those agreements targeted by CMS with respect to fair market value and commercial reasonableness of all of these arrangements. Furthermore, as outlined by the recent settlement by Covenant Medical Center and Wheaton Franciscan Healthcare-Iowa, Inc. in the amount of \$4.5 million, it was found that compensation paid to employed physicians by Covenant exceeded fair market value and was not commercially reasonable. While the Stark law exception for bona fide employment usually gives hospitals a safe harbor, employment agreements must still meet the test of compensation being at fair market value and commercially reasonable.



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Furthermore, hospital/physician arrangements should be a part of every institutions compliance program, wherein there should be a comprehensive physician contract review process which includes both documentation of legal review as well as an independent assessment of the fair market value of hospital/physician arrangements. In addition, tax exempt hospitals would also be well advised to place a cap on total incentive compensation due to the excessive compensation rules promulgated by the Internal Revenue Service (IRS).

For further information regarding the development and implementation of a physician contract compliance program, please contact:

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Publications related to this topic on website www.practicesupport.com include:

- [Creating the Hospital Group Practice](#)
- [Sailing the Seven "Cs" of Hospital-Physician Relationships](#)
- [Physician Recruitment & Employment: A Complete Reference Guide](#)