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By Nina Youngstrom

In a case that turned on place-of-service (POS) codes, the HHS Departmental Appeals Board (DAB) affirmed CMS's denial of provider-based status to an Indiana hospital's provider-based department (PBD). Although the physicians who performed services at the off-campus PBD, Woodland Cancer Care Center of Franciscan Health Michigan City, were not employed by the hospital, the DAB said compliance with the provider-based regulation requires a hospital to "ensure that bills for physician services, regardless of the billing provider listed on the Form CMS-1500, list the appropriate site-of-service code."^[1]

The decision indicates that hospitals are responsible for the POS code reported by physicians performing services at the PBD and that its provider-based status could be jeopardized by POS mistakes, perhaps depending on their billing relationship with the hospital, said attorney Holley Thames Lutz, with Dentons US LLP in Washington, D.C. "Such a rigid view of this portion of the provider-based regulations and indeed of the provider-based regulations overall is not altogether accurate and is also troubling," she said. "I think Woodland was decided in error." Hospitals are responsible for UB-04 forms, not the 1500 and the POS codes selected by physicians, she noted.

In the Woodland case, the Franciscan Physician Network billed Medicare for physician services on behalf of the physicians performing services at the cancer center.

PBDs seem to be taking a hit lately. In addition to this decision, the University of Miami settled a \$22 million False Claims Act case that stemmed partly from alleged noncompliance with the provider-based regulation's notice requirements.^[2] And on Sept. 28, the HHS Office of Inspector General (OIG) announced that Eskenazi Health and Midtown Community Mental Health Clinic in Indiana agreed to pay \$901,724 in a civil money penalty settlement.^[3] OIG alleged Eskenazi billed Medicare and Medicaid for services at 16 off-site locations that failed to meet provider-based requirements from Aug. 20, 2012, through Aug. 20, 2018. The settlement stemmed from Eskenazi's self-disclosure to OIG. A spokesman for the hospital declined to provide any details.

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