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Hospital Settles CMP Case Stemming from M.D.'s Agreement With Cataract Laser Supplier

By Nina Youngstrom

In a case about a vendor's outside payments to an employed physician, University of Miami Health System (UHealth) in Florida has agreed to pay $325,150 in a civil monetary penalty settlement with the HHS Office of Inspector General (OIG). UHealth disclosed the physician's arrangement to OIG in 2018.

According to the settlement, OIG alleged that UHealth submitted claims to Medicare, Medicare Advantage, Medicaid and the Veterans Health Administration for items or services that it knew or should have known were fraudulent. Between Aug. 15, 2016, and July 23, 2018, UHealth billed for cataract and corneal procedures that were performed using a laser. OIG alleged the claims were "tainted" by violations of the Anti-Kickback Statute[1] because of an agreement between the employed physician and the medical device company that manufactured the laser, and therefore "could not be paid." The procedures were billed with CPT codes 65875, 66982, 66984, 67010, and V2788.

"You can have these financial relationships. The question is whether these financial relationships meet a safe harbor under the Anti-Kickback Statute or come close to meeting a safe harbor because the terms are fair market value and no intent to induce referrals is present," he explained. If a doctor receives $100,000 from a device company for consulting, and he has documentation to support 500 hours of services, which works out to $200 per hour, that may pass the smell test. Even if it's papered, however, the physician must be able to articulate the reason for the consulting and verify the services were performed. Otherwise, that doesn't bode well for the integrity of his referrals. The hospital also should consider whether it's comfortable allowing the physician to have a hand in the purchase of supplies and equipment manufactured by the company. And the hospital could compare the volume of procedures performed with the medical device before and after the physician entered into the consulting arrangement. "You are looking for sudden shifts in how they operate," Wade said. If physicians switch from a knee manufactured by company A to a knee manufactured by company B, "there is reason for further evaluation of their arrangements. Look at the Open Payments program."

Oversight is much harder when physicians are members of the medical staff without being employed by the hospital. They could be part of a value-based purchasing program, such as the Bundled Payments for Care Improvement or Comprehensive Care Joint Replacement Model. "You don't want to have someone who is part of a value-based payment arrangement who is compensated by a manufacturer without being able to vet whether it's a fair market arrangement," Wade said. "It's preferable they don't take money from the device manufacturer if the use of the equipment is part of the" value-based program, "although it's not illegal to do so."

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