

## Report on Medicare Compliance Volume 31, Number 16. May 02, 2022 CMP Settlement: Services 'Personally Performed' by Mid-Levels Were Attributed to Doctor

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By Nina Youngstrom

National Medical Services II in Florida has agreed to pay \$923,660 in a civil monetary penalty settlement over mid-level provider and physician compensation. The allegations hint at one aspect of the challenges around billing and compensation for services provided by nonphysician practitioners (NPPs), also known as advanced practice providers (APPs), which include incident-to billing and the new Medicare requirements for split/shared services. Coloring inside the compliance lines for billing and productivity compensation is becoming increasingly difficult with split/shared billing, experts say.

According to the settlement, which was obtained through a Freedom of Information Act request, the HHS Office of Inspector General (OIG) alleged that National Medical Services II submitted claims to Medicare, Medicaid, TRICARE and the Department of Veterans Affairs for services that were false or fraudulent. From Sept. 8, 2014, to Nov. 30, 2018, mid-level providers employed by National Medical Services II “fraudulently recorded personally performed services as if the services were performed” by an employed physician (who isn’t identified in the settlement). “Respondent improperly submitted claims for those physician services,” OIG alleged.

The settlement stemmed from a self-disclosure. National Medical Services II was accepted into OIG’s Self-Disclosure Protocol on Oct 14, 2021. The vice president for Tenet Physician Resources signed the settlement, indicating National Medical Services II is or was owned by Tenet at the time of the covered conduct. Tenet didn’t respond to several requests for comment, and it didn’t admit liability in the settlement.

Although additional details were unavailable, the settlement is a reminder of the various billing and Stark Law compliance issues around APPs and physicians. “This is another compliance aspect that organizations may not be thinking about, but with the surge and growth in the use of APPs and with the goal of working collaboratively with physicians and effectively allowing them to leverage their time, it is becoming more prevalent,” said Lyle Oelrich, a principal in PYA.

Under Medicare, there are three models for billing services performed by APPs who work in physician practices: billing for services under their own national provider identifiers (NPIs), which Medicare reimburses at 85% of the physician fee schedule; billing incident to the physician’s services, which pays 100% of the fee schedule but requires direct physician supervision and has other strings attached; and billing for split/shared services, which applies to hospital and other facility settings. If hospitals have financial relationships with referring physicians and designated health services are payable by Medicare, they have to satisfy a Stark exception, and for employed physicians, that’s the employment exception or in-office ancillary exception for physicians employed by a group practice that meets the Stark definition.

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