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Hospital Settles CMP Case Over Free APP Services for Physicians

By Nina Youngstrom

In a case about the free or discounted services of advanced practice providers (APPs), St. Vincent's Medical Center in Bridgeport, Connecticut, agreed to pay \$747,973 to settle a civil monetary penalty case with the HHS Office of Inspector General (OIG).

OIG alleged that for almost seven years, from June 1, 2012, through Feb. 8, 2019, the hospital paid remuneration to certain physicians through APP staffing arrangements. The remuneration was "in the form of providing clinical staff without cost, or at a reduced cost, to the physicians to assist them in treating inpatients at the hospital respondent formerly owned and operated until Oct. 1, 2019," the settlement states.

St. Vincent's reported problems to OIG and was accepted into its Self-Disclosure Protocol in October 2018, according to the settlement, which was obtained through the Freedom of Information Act. OIG alleged the hospital paid remuneration in violation of the Civil Monetary Penalties Law's provisions applicable to kickbacks and created financial relationships that resulted in the submission of claims for referrals for designated health services. The hospital didn't admit liability in the settlement and declined to comment.

The settlement may resonate with hospitals because many lend the services of employed APPs (e.g., physician assistants, nurse practitioners) to independent physicians at no charge, which may run afoul of the Stark Law and/or Anti-Kickback Statute, depending on the details, said Los Angeles attorney Charles Oppenheim, with Hooper, Lundy & Bookman. "These arrangements are very common, but there is some definite risk," he noted. "It's not that hard to cross the line when APPs who are hospital employees are deemed as essentially providing free services to doctors on the medical staff and doing what doctors would otherwise have to do themselves."

Hospitals provide APP services free to physicians on the medical staff because it facilitates higher quality of care and moves patients through faster, Oppenheim said. "It's an extra pair of hands taking care of patients," he explained. But free APP services can turn into remuneration if they supplant physician services rather than supplement them. For example, it would be compliant for APPs to round after the surgeon, with the patient having two visits post-surgery. But if the surgeon bills Medicare for global surgery, which includes the post-surgery visit, but delegates the post-surgery visit to the APP, that would be noncompliant, he explained.

To help prevent Stark Law violations, Oppenheim suggests hospitals configure their electronic health record systems to ensure employed APPs enter their notes as progress notes, "not in a way that replaces what physicians are supposed to be doing," Oppenheim said.

Contact Oppenheim at coppenheim@health-law.com.

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