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Hospital Settles CMP Case Over Free APPs; 'Bona Fide' Use Shouldn't Inspire Fear, Lawyer Says

By Nina Youngstrom

In a case that may hit a raw compliance nerve, Ascension Macomb Oakland Hospital in Michigan has agreed to pay \$100,000 in a settlement with the HHS Office of Inspector General (OIG) over free services provided to certain physicians by advanced practice providers (APPs). The settlement stemmed from the hospital's self-disclosure to OIG.

According to the settlement, Ascension Macomb Oakland Hospital paid remuneration to certain physicians who referred patients to the hospital for surgeries between July 16, 2014, and Dec. 1, 2020. "The remuneration was in the form of clinical staff, specifically, advanced practice providers who performed pre-surgical histories and physicals for the Physicians without cost to the Physicians," OIG alleged in the settlement, which was obtained through the Freedom of Information Act. The hospital was accepted into OIG's self-disclosure protocol in October 2022. OIG alleged the remuneration paid to the physicians subjected the hospital to civil monetary penalties arising from the Anti-Kickback Statute (AKS) and led to claims for designated health services prohibited by the Stark Law. The hospital didn't admit liability in the settlement and two hospital officials didn't respond to RMC's requests for comment.

The APP picture is a complicated one. Clinical care requires a collaborative team with both physicians and APPs, said attorney Holley Thames Lutz, with Dentons US LLP in Washington, D.C. Hospitals shouldn't fear the fraud and abuse laws if they have bona fide, patient-centric reasons to use APPs to support hospital patients (e.g., improving patient outcomes and satisfaction scores), she said. "Hospital-employed APPs should be able to round on patients, correct errors, etc., as part of a clinical care team," Lutz explained. For example, if a physician orders a patient's discharge before heading into an eight-hour emergency surgery but without writing an antibiotic prescription, an APP involved in the patient's care should be able to write the prescription for a timely discharge, she said. The physician establishes the plan of care and it's carried out by the APP (and others, including registered nurses). Compliance depends partly on whether the APP's services are provided in addition to, not in place of, the physician's services.

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