

Continuing Spotlight on Transparency...

Focus on Latest CMS Request for Disclosures of Hospitals-Physician Financial Relationships

Key Deloitte Contacts

Kim Zeoli, Partner
Tel: (617) 437-3467
kzeoli@deloitte.com

Matt Kates, Partner
Tel: (312) 486-2180
mkates@deloitte.com

John Valenta, Director
Tel: (714) 436-7296
jvalenta@deloitte.com

In a Federal Register notice issued December 19, 2008, the Centers for Medicare and Medicaid Studies indicated that they intend to move forward with the Disclosure of Financial Relationships Report ("DFRR").

What is the purpose of the DFRR?

CMS has stated that the purpose of the DFRR is to identify arrangements that potentially do not comply with federal and self-referral laws, including Stark Law, and to identify examples and areas of non-compliance that will aid CMS in future rulemaking.

What are the reporting requirements?

Hospitals designated by CMS to participate in the DFRR process will be asked to complete specific worksheets which will require detailed information related to ownership/investment and financial arrangements with physicians. Detailed supporting documentation must also be submitted with the DFRR, such as copies of written agreements between the hospital and its physicians. In addition, CEO/CFO's will be asked to attest to the accuracy of the information provided.

Who will receive the survey?

The completion of DFRR disclosure process is mandatory. The latest announcement by CMS indicates that the DFRR will be distributed to 400 private sector, for-profit and not-for-profit, general acute care and specialty hospitals throughout the United States. Of the 400 expected recipients, approximately 300 will consist of hospitals that failed to respond to a 2006 CMS voluntary survey of physician financial relationships. Although CMS indicates that the current DFRR process is a one-time reporting initiative, CMS has repeatedly emphasized that the disclosure of physician relationships may become an ongoing obligation for all hospitals in the future.

What is the timing?

The DFRR process continues to face opposition from industry groups. However, CMS may begin sending the DFRR forms to hospitals any time after the end of the 30 day comment period, which ended January 20, 2009. Hospitals receiving the request will have 60 days from the date of the request letter to complete and submit the DFRR to CMS. CMS may consider requests for extensions if good



cause can be demonstrated. Hospitals failing to complete the DFRR within the required timeframe may be subject to civil monetary penalties of \$10,000 for each day beyond the deadline.

What can you do to prepare?

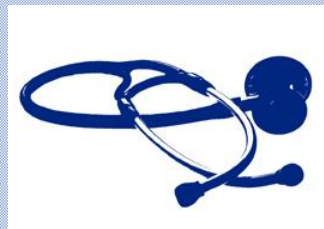
As part of its overall compliance strategy, it will be important for all hospitals to understand the requirements of the DFRR and to take steps to ensure the hospital is in a position to respond timely and accurately to information requested. It is also advisable to develop or further enhance the hospital's comprehensive contract management systems required for inventory of all physician relationships. Hospitals also need to evaluate document retention and retrieval systems required to access supporting documentation necessary to complete the DFRR and monitor physician relationships.

In preparing for the DFRR, hospitals may also wish to consider conducting a preliminary internal review to identify missing information or questions that may need to be addressed. While many organizations, in collaboration with legal counsel, may have reviewed the contract management aspects of the physician contracts and relationships over the last year, it will be imperative that providers review not just the terms of the contract but the actual execution and performance of those contracts. Strong internal controls can provide a backbone for mitigating risk. In addition, the proper functioning of a data

repository for tracking financial relationships with physicians, storing agreements and supporting documentation, and tracking payments to physicians, is an important component to an effective compliance program around this area.

With the strong focus in 2009 from CMS and the Officer of the Inspector General ("OIG"), and other regulatory agencies relating to physician relationships, many providers are evaluating internal controls around this particular area, including the actual contract execution, payments and implementation or validation of contract management systems.

If you need additional information about the DFRR, assistance with assessing or implementing effective controls, systems or processes around physician relationships, or need assistance in preparing the DFRR or other transparency, disclosure or reporting objectives, please contact one of the Deloitte representatives in this bulletin.



Key questions to consider...

1. Has a process been implemented around physician relationships that addresses all aspects of the relationship life cycle (e.g. initiation, development, review, approval and performance) of physician contracts?

Some areas to consider:

- **Community needs assessments**
- **Fair market value studies**
- **Legal review by experienced counsel**
- **Approval by appropriate members of management and governing bodies**
- **Payment and performance review and approvals**
- **Documentation of internal controls**

2. Do hospital policies and procedures address the risk (e.g., Stark, Anti-kickback and Private Inurement) associated with entering into financial arrangements with physicians and medical groups? Are controls in place to mitigate these risks?

3. If requested by the government, is the hospital in a position to quickly disclose all direct and indirect financial ownership and investment interests, and compensation arrangements with physicians?

4. Is a database utilized to track existing relationships with physicians?