

 **Search All Issues** **Contents**

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Page 937

## News Provider Regulation

### Hospitals

#### **CMS Issues Specialty Hospital Report, Requires Disclosure of Investment by Doctors**

The Centers for Medicare & Medicaid Services has issued a final report to Congress outlining the agency's plans to address physician ownership in specialty hospitals and simultaneously end an administrative moratorium on specialty hospital enrollment in the Medicare program, CMS Administrator Mark B. McClellan said.

Among efforts addressed in the report are new requirements that hospitals disclose full details about physician ownership in their institutions, McClellan said in an Aug. 8 phone conference with reporters. The report was required by the Deficit Reduction Act of 2005.

Failures to report data will result in penalties of as much as \$10,000 for each day requested data is not submitted to CMS, McClellan said. He added that the information would help CMS and the Department of Health and Human Services Office of Inspector General better enforce physician self-referral/Stark rule and anti-kickback statute provisions as they relate to doctor ownership in hospitals. Specifically, McClellan said, law enforcers could use the financial data to evaluate disproportionate investment returns to doctors that could indicate inappropriate activities under Stark and AKS.

In the survey of specialty hospitals, respondents reported only proportionate returns on investment to physician owners; however, more than half of respondents did not complete the investments portion of the survey, according to a CMS fact sheet about the report.

CMS also found in its survey that all cardiac specialty hospital respondents offered non-investor physician terms similar to those offered to physician investors, where orthopedic and surgery hospitals did so less often. However, CMS also said it believed that volume of services and revenue generated by a doctor might be a "critical factor" for hospitals in determining which physicians to allow to invest, according to the fact sheet.

CMS said in the plan that it will require specialty hospitals to disclose to patients that staff doctors have a financial interest in the institutions, and the Medicare enrollment form will be changed to better identify specialty hospitals, according to the fact sheet.

#### **Physician/Hospital Collaboration**

The report also includes plans by CMS to promote collaboration between physicians and hospitals on cost-saving measures, McClellan said. In particular, he said the Medicare agency would authorize a gainsharing demonstration that would address complaints by full-service acute care hospitals that they had little leverage in working with physicians to reduce hospital expenditures.

The plan also builds on payment reforms announced Aug. 1 by CMS that reduce incentives for doctors and hospitals to focus their practice areas on lucrative services, such as cardiac care, McClellan said.

The CMS report confirmed earlier findings that specialty hospitals tend to treat fewer low-income patients, noting that Medicaid inpatient discharge rates at full-service acute care hospitals averaged 18.4 percent compared to 3.6 percent at specialty hospitals. Similarly, Medicaid outpatient discharges

averaged 12.3 percent at full-service acute care facilities compared to 6.1 percent at specialty hospitals.

CMS likewise found that competitor acute care hospitals provided greater shares of charity care than specialty hospitals.

CMS also clarified Emergency Medical Treatment and Labor Act (EMTALA) requirements for hospitals that do not have an emergency department, including many specialty hospitals. The plan states that hospitals must accept transfers of cases when they have the capacity to provide appropriate care, whether they have an emergency department or not.

### Response to Grassley

In a separate Aug. 8 letter to Senate Finance Committee Chairman Charles E. Grassley (R-Iowa), McClellan responded to concerns that data used to prepare the final specialty hospital report were flawed and potentially misleading.

Grassley and Finance Committee ranking member Max Baucus (D-Mont.) in a July 28 letter to McClellan challenged the use of data from community hospitals in certificate-of-need states where physician-owned specialty hospitals are prohibited from operating and are not true competitors to specialty facilities. The senators also questioned why more appropriate hospitals that do compete with specialty hospitals were not surveyed.

In his response letter, McClellan explained that, while some community hospitals surveyed were in CON states, they were in health referral regions and hospital service areas also served by specialty hospitals.

"Several competitor hospitals included in the survey are located in states with certificate of need laws; nevertheless, these hospitals compete with one or more specialty hospitals that are located in the same or adjacent state," McClellan said in the letter.

McClellan also told Grassley that CMS is continuing to enforce the 18-month payment moratorium for specialty hospitals called for in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. He said CMS has reviewed claims data from physician-owned specialty hospitals during the moratorium period and demanding overpayments in cases of inappropriate claims that were paid by Medicare.

CMS's strategic and implementing plan also addresses moratorium enforcement matters.

Grassley Aug. 8 called the final report from CMS "important" but said Congress should enact legislation that would repeal the whole hospital exception in the Stark law, a provision--which some call a loophole--that allows physicians to refer patients to limited service hospitals in which they have financial interest.

"If this plan is fully implemented, it will reveal the financial interests of doctors in specialty hospitals and require those arrangements to be bona fide. That needs to be done, so this plan is important," Grassley said. "But, these steps alone won't unravel the web of conflicts that have been created by these limited service hospitals, which cherry pick patients based on dollars rather than diagnosis and put the well-being of both individual patients and the health care delivery system at risk."

*A fact sheet describing the final report is available at <http://op.bna.com/hl.nsf/r?Open=thyd-6shk3u> on the Web. The full report is expected to be available at [http://www.cms.hhs.gov/PhysicianSelfReferral/06a\\_DRA\\_Reports.asp](http://www.cms.hhs.gov/PhysicianSelfReferral/06a_DRA_Reports.asp).*

*McClellan's letter to Grassley is available through BNA Plus: (800) 372-1033 or (202) 452-4994, or e-mail [bnaplus@bna.com](mailto:bnaplus@bna.com).*

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