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In Period of Disallowance Proposal, Hospitals That Act Fast Could Avoid Stark Repayment

By Nina Youngstrom

For one year, a hospital has been paying Dr. Chen \$150 an hour for serving as a medical director, although her contract says it should be \$140. Because the physician refers patients there, the extra compensation runs afoul of the Stark Law, pushing the hospital into the dreaded “period of disallowance,” when its Medicare reimbursement for all services stemming from the physician’s referrals must be returned. The period of disallowance will end when the hospital recovers the excess cash from the physician and fixes the accounts payable glitch. This has been a painful fact of life under the Stark Law^[1] for a decade, but hospitals are on the verge of relief from CMS’s proposed overhaul of the Stark regulations.^[2]

A provision in the proposed regulation would allow hospitals and other entities that provide designated health services (DHS) to keep Medicare reimbursement they received during the period of disallowance, said Max Reynolds, general counsel at John Muir Health System in San Francisco, at a Dec. 18 webinar^[3] sponsored by the Health Care Compliance Association. The catch: They must fix the noncompliance while the contract is in effect, he said. “You’re out of luck” if the contract is brought into compliance retrospectively. He emphasized, however, that this is still only a proposed rule.

“Hospitals can keep revenue for impermissible referrals” when they identify the errors and put corrective actions in place during the term of an agreement, Reynolds explained. “If it’s caught a month after the arrangement ends, CMS is saying that could be a million-dollar ramification. That’s a harsh outcome. I’m hoping CMS will re-evaluate it,” Reynolds said. The fallback in this circumstance would normally be the isolation transactions exception, but CMS floats changes to that too, and, if finalized, “you can’t rely on it.”

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