

## Report on Medicare Compliance Volume 31, Number 7. February 21, 2022

### Hospital Settles CMP Case Over Billing a Drug as Waste and Again as Administered

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By Nina Youngstrom

Vassar Brothers Medical Center (VBMC) in Poughkeepsie, New York, agreed to pay \$432,815 in a settlement with the HHS Office of Inspector General (OIG) over its billing for wasting a drug and administering it at the same time.

According to the settlement, which was obtained through the Freedom of Information Act, OIG alleged that VBMC submitted claims to Medicare, Medicaid, Medicare Advantage, Medicaid managed care plans and TRICARE for items or services that were fraudulent from Jan. 14, 2011, through Aug. 10, 2017. Specifically, the hospital “submitted duplicate claims for the antibiotic daptomycin, whereby leftover amounts of daptomycin, which had already been billed as waste for one patient, were administered to another patient and billed for again.” OIG alleged this violated the Civil Monetary Penalties Law. The hospital self-disclosed in 2019 and was accepted into OIG’s Self-Disclosure Protocol in February 2020. It didn’t admit liability in the settlement.

The self-disclosure stemmed from an internal audit at VBMC “that was prompted by changes in how the JW modifier was billed to the Medicare administrative contractor,” said Jana Kolarik, outside counsel for the hospital. The JW modifier is used to report to Medicare the amount of drugs or biologicals that are wasted, which is reimbursable. “In the audit, VBMC discovered there was a disconnect between how the pharmacy was supplying the drug, which was as a multi-use vial (MUV) and could be used over several patients, and how it was being billed. It was entered into the billing system as a single-use vial, which was billed for one patient as the administered dose with the remaining vial contents billed as the waste,” said Kolarik, with Foley & Lardner LLP. “Upon discovering the disconnect, the billing was changed to reflect the use, i.e., as a MUV, so no waste would be billed.”

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