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Medicare Nonparticipation, Opt-Out Rules at Heart of CMP Settlement

By Nina Youngstrom

In a manifestation of an underappreciated risk area, Dartmouth-Hitchcock Clinic in New Hampshire and the Trustees of Dartmouth College have both settled a civil monetary penalty case over alleged noncompliance with Medicare rules for nonparticipating physicians. The HHS Office of Inspector General alleged Hanover Psychiatry, which the settlement said is a private practice operated by the clinic, didn't bill Medicare on behalf of some of its patients, charged them too much and didn't follow other rules that CMS sets forth for nonparticipating physicians and physicians opting out of Medicare.

It may be a sign of things to come because there's growth in the direct primary care and concierge medicine models, said Richelle Marting, an attorney in Overland Park, Kansas. Whether the coronavirus pandemic pushes that off course, however, remains to be seen.

Many providers are under the impression that if they're nonparticipating physicians or opt out of Medicare, they're free to treat Medicare patients as self-pay and avoid the headache of Medicare requirements and administrative burdens altogether, Marting said. "But it's simply not the case." There are rules for formally opting out, and there are rules for enrolled providers who are nonparticipating. "It's counterintuitive in the sense that you would think by not submitting an enrollment application and agreement, you're not bound by the program's requirements. It can clearly be a costly mistake," Marting said.

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