

Health Information Compliance Alert

Compliance: Disclose Physician Ownership of Referring Hospitals Up-Front

Both physician-owner and hospital are responsible.

If your physician owns a stake in a hospital, you've got a responsibility to share that information with patients you refer to that hospital. That's the word from Medicare in Transmittal 58, effective March 6, which reminds practices that this rule has been on the books since Oct. 1, 2007.

CMS issued the new transmittal to announce that "CMS may deny a provider agreement to a hospital that does not have procedures in place to notify patients of physician ownership in the hospital."

The rules: If your physician or one of his immediate family members "has an ownership or investment interest" in a hospital, you must notify any patient you refer to that hospital of your physician's ownership or investment interest. In addition, the hospital must notify the patient in writing that the hospital is physician-owned.

Example: Dr. Smith refers a patient to a radiologist who practices in a hospital where Dr. Smith has an ownership interest.

Solution: "In my opinion, Dr. Smith should disclose in writing and inform the patient of his ownership interest in the hospital," advises **Stephen Allison** with Haynes and Boone, LLP in San Antonio, Tex. "This disclosure is an integral part of informed decision making by the patient under the practical theory that such disclosure is in the interest of the health and safety of the patient," he says. This will permit the patient to make a more informed choice regarding treatment, "including assessing whether Dr. Smith's financial interest in the hospital may present a conflict of interest that may not be in the patient's best interest."

The hospital should post notices stating that it is owned by physicians (and identify the physicians), and should say that further information is available upon request.

"Dr. Smith could take similar action in his office, including a sign and/or other notice to patients that he has a financial interest in the hospital and that further information is available upon request, but a preferable approach might be to include such disclosure on a referral form provided to and discussed with the patient at the time of the proposed referral," Allison says.

"Dr. Smith should maintain a copy of the completed referral form, indicating it was provided to the patient, in his records," Allison says. "He should also be prepared to discuss the factors of his interest in the hospital and the proposed referral and, in addition, alternative hospitals and specialists."

To read the transmittal, visit www.cms.hhs.gov/transmittals/downloads/R58GI.pdf.