

Proposed CMS Survey Form Requiring Extensive Disclosure by Hospitals of Hospital/Physician Relationships is Under Review by OMB—Comment Period Currently Open

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January 2009

On December 19, 2008, the Centers for Medicare and Medicaid Services (“CMS”) published a notice that the Office of Management and Budget (“OMB”) would be accepting comments concerning the Disclosure of Financial Relationships Report (“DFRR”). Comments currently are due January 20, 2009. For the reasons described in more detail below, we encourage health care providers, particularly hospitals, to review this survey form and consider submitting comments. EBG will be submitting comments to OMB on behalf of clients.

According to CMS, the DFRR is “an information collection instrument” that is designed to “assist in enforcement of the physician self referral statute and implementing regulations.”¹ In fact, the DFRR is an extensive survey form for hospitals containing 8 worksheets. The DFRR requires, among other things, that the hospital disclose: information regarding direct and indirect physician investment and ownership in the hospital, payments to the hospital by physician owners and each rental, personal service and recruitment arrangement between the hospital and physicians. The DFRR also contains a series of questions targeting information on other types of compensation arrangements between the hospital and physicians, including non-monetary compensation to physicians, medical staff incidental benefits that exceed published limits and charitable donations by physicians to the hospital. The DFRR is to be completed, certified by a hospital officer and submitted to CMS within 60 days of its receipt. *Actual copies of agreements between the hospital and the physicians along with the physicians’ provider number must be supplied to CMS with the completed DFRR.*

In the December 19, 2008 Federal Register notice, CMS announced that OMB would be accepting comments on the DFRR until January 20, 2009.² It is possible that the deadline will be extended because January 20, 2009 is Inauguration Day and many federal government offices in DC are scheduled to be closed that day.

The history of the DFRR begins with the Deficit Reduction Act of 2005 when Congress required the Secretary of the Department of Health and Human Services to develop a strategic and implementing plan to address certain issues relating to physician-owned specialty hospitals.³ In preparing its report, CMS sent a voluntary survey to 130 specialty hospitals and 220 competitor hospitals which sought information regarding, among other things, the hospitals' ownership and investment relationships and their compensation arrangements with physicians. In CMS' Final Report to Congress, CMS stated that CMS would begin to require all hospitals to provide information on a periodic basis concerning the hospitals' investment interests and compensation arrangements with physicians.⁴

Under the Paperwork Reduction Act, CMS was required to obtain clearance from the OMB prior to sending out the DFRR. Although the DFRR was under review by OMB for several months, on April 10, 2008, OMB reported that CMS had withdrawn its request for clearance of the DFRR.⁵ Just a few weeks later, on April 30, 2008, CMS re-introduced the DFRR as part of the FY 2009 IPPS Proposed Rule, and CMS solicited comments on the following:

- whether the collection efforts should be recurring, and, if so, on what basis (annually, etc.);
- whether CMS is collecting too much or not enough information, and whether it is collecting the correct type of information;
- the amount of time it will take hospitals to complete the DFRR and the costs associated with completing the DFRR;
- whether CMS should direct the DFRR to all hospitals and whether it should stagger the collection so that only a certain number of hospitals are surveyed each year; and
- whether hospitals, once having completed the DFRR, should send in yearly updates and report only changed information.⁶

In its original submission to OMB, CMS estimated that it would take a hospital five (5) hours to complete. CMS then increased this estimate in the FY 2009 IPPS Proposed Rule to thirty-one (31) hours and estimated that it would cost hospitals \$1550 to complete (based on a \$50 per hour rate for an accountant). When CMS issued the FY 2009 IPPS Final Rule, CMS again revised its estimate of the number of hours it would take to complete the DFRR to one hundred (100) hours and CMS stated "that many hospitals may choose to involve accounting staff and attorneys for legal review. Therefore, the costs per hospital, associated with completing the DFRR has increased from \$1550 to \$4080."⁷ CMS also stated in the FY 2009 IPPS Final Rule that it intended to send the survey to 500 hospitals each year, but without providing any explanation as to how these hospitals would be chosen.⁸

Given the substantial burden that completing the DFRR will place on hospitals, a burden that is still significantly underestimated by CMS, given the private and highly confidential nature of the agreements between hospitals and physicians, and given the significant penalties that can be imposed both on the hospitals and the executives who

are required to attest to the accuracy of the survey responses, we recommend that hospitals and other interested parties review the draft survey form and consider commenting to OMB. If your organization is interested in sharing in the professional fees associated with EBG's comments on behalf of clients (on an anonymous basis), please contact Beth Essig, David Matyas, or Carrie Valiant.

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Endnotes

¹ 73 Fed. Reg. 77701 (Dec. 19, 2008); *See also*, 73 Fed. Reg. 48,434, 48,740 (Aug. 19, 2008).

² 73 Fed. Reg. at 77,702.

³ Deficit Reduction Act of 2005, Pub. L. No. 109-171, §5006.

⁴ A copy of the CMS Final Report to Congress can be found at

http://www.cms.hhs.gov/PhysicianSelfReferral/06a_DRA_Reports.asp#TopOfPage

⁵ *See* http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=200710-0938-003

⁶ 73 Fed. Reg. at 23,695 – 23,698

⁷ 73 Fed. Reg. at 48,741.

⁸ Despite the fact that the FY 2009 IPPS Final rule stated that CMS would send the survey form to 500 hospitals, in the December 19, 2008 Federal Register notice regarding the collection of comments, CMS stated that each year there would be a total of only 400 for profits and not-for profit institutions receiving the survey form each year.