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July 17, 2007



TEXAS HOSPITAL ASSOCIATION

Leslie Norwalk, Esq.
Acting Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
200 Independence Avenue, S.W., Room 445-G
Washington, DC 20201



RECEIVED
7/20/07

Re: Disclosure of Financial Relationships Report, Form Number CMS-10236

Dear Ms. Norwalk:

On behalf of our more than 400 member hospitals, the Texas Hospital Association is submitting the following comments on the Centers for Medicare & Medicaid Services' proposed Information Collection Request relating to financial relationships between hospitals and physicians. THA also fully supports the more detailed comments and recommended changes in the form provided by the American Hospital Association in its letter of July 16, 2007.

The THA is particularly interested in the proposed information request because there are a significant number of hospitals with physician ownership located in Texas and it is anticipated that a number of these facilities will be requested to submit the report to CMS. While the THA supports the collection of information on physician ownership interests, we believe it is important that this data collection effort be consistent with congressional direction and not impose an administrative burden on hospitals. Further, the survey form and instructions need to provide clear guidance on what is being requested and how the form should be completed.

As emphasized in the AHA comment letter, our association is very concerned about the proposed expansion in the information to be collected. The request for data on compensation arrangements unrelated to physician ownership is not consistent the congressional concerns about physician investment in health care facilities and will significantly increase the time and expense associated with completion of the form by hospitals. In addition, the nature and extent of the compensation information requested and the required certification by the hospital chief executive officer will necessitate significant involvement of hospital auditors and legal counsel, which will increase the hospitals' costs of compliance. Further, Worksheet 6 will require responding hospitals to provide financial and legal assessments of certain types of compensation arrangements entered into with physicians, which may expose the hospital and the hospital executive signing the certification to additional investigation or enforcement action without due process of law.

In conclusion, we would urge CMS to reconsider its proposed form and to focus this data collection effort on physician investment interests in hospitals. Further, we would urge CMS not to pursue its proposed collection of information on physician compensation arrangements.

Thank you for the opportunity to provide comments on the proposed disclosure form. If you have any questions about our comments, please feel free to contact me at (512) 465-1038 or at cbailey@tha.org.

Sincerely,

A handwritten signature in black ink that reads "Charles Bailey". The signature is written in a cursive, slightly slanted style.

Charles W. Bailey
Senior Vice President/General Counsel

cc: CMS Office of Strategic Operations
And Regulatory Affairs
Attention: William Parham, III



Tennessee Hospital Association

July 16, 2007

Centers for Medicare & Medicaid Services
Office of Strategic Operations and
Regulatory Affairs
Division of Regulations Development-B
Attention: William N. Parham, III
Room C4-26-05
7500 Security Boulevard
Baltimore, Maryland 21244-1850



RECEIVED
7/20/07

RE: Disclosure of Financial Relationships Report – Form: CMS-10236

Dear Mr. Parham:

The Tennessee Hospital Association (THA), on behalf of our over 200 healthcare facilities, including hospitals, skilled nursing facilities, home care agencies, nursing homes, and health-related agencies and businesses, and over 2,000 employees of member healthcare institutions, such as administrators, board members, nurses and many other health professionals, appreciates the opportunity to submit comments on the Centers for Medicare & Medicaid Services (CMS) new collection of information relating to a hospital's compliance with Section 1877 of the Social Security Act. These comments address the manner and form of the collection of ownership, investment and compensation arrangements between hospitals and physicians.

The focus of these comments rests on three primary areas of concern:

- the conversion of the voluntary survey of 500 entities is sufficient
- the administrative burden of these new reporting requirements
- the overly intrusive nature of the request

We urge CMS to limit the request to those entities that failed to respond to the voluntary disclosure of financial reporting request (DFRR).

Sufficiency of the Sampling of Hospitals

CMS sent a similar voluntary request to a sample of 500 hospitals in 2006. The stated purpose for that collection of data was to propose periodic reporting requirements for all hospitals in the future. Any such ongoing reporting requirements would likely receive notice and an opportunity to comment through rulemaking prior to becoming an ongoing requirement. Thus, the sample of hospitals receiving the voluntary request would be used by CMS to test the format of the disclosure of financial relationships reporting form. Entities receiving the voluntary survey that failed to respond completely, or at all, may be appropriately the target of this next step by CMS – mandatory reporting and the imposition of a ten thousand dollar per day (\$10,000/day) penalty for failure to timely respond. In our opinion, the initial sample of 500 entities and complete responses by them would allow CMS to assess the effectiveness of the form as a tool to capture the data needed in the future to analyze hospital compliance with Section 1877 of the Social Security Act.

Administratively Burdensome

The forty-five (45) days permitted to complete the six worksheets and submit certified responses poses an additional concern for THA. Hospitals that receive the DFRR, especially those for whom it is a first impression document, will face significant challenge to quickly and, most importantly, accurately compile the complex information requested. Hospital compliance programs will need to be reviewed to make sure that systems are in place to track both ownership and compensation relationships with physicians and those programs may require modification to enable a hospital to provide the information required by the DFRR. Moreover, hospitals may want to review their current compliance controls and do an internal assessment of compliance with the Stark law prior to self-reporting the information to CMS in furtherance of this enforcement activity. In any event, 45 days to respond to an entity that is receiving this request for the first time is far too short a length of time to ensure the accuracy of the data.

Overly Intrusive

The overall depth and specificity of the requested data requires entities to provide information that may not be readily accessible and may require systems to be put in place to capture the data in the format required. For example, Worksheet 2 requests “all payments made by physician-owner/investors based on or related to their investment interest, including, but not limited to, initial investments, assessments, capital calls, loan guarantees” by date. While every entity with such relationships should be able to retrieve the information, it is likely to be difficult and costly in terms of administrative hours in the hospital community to do so. Worksheet 6 requests “a copy of the written agreement between the physician and the hospital in force”. Provision of these agreements is not likely to receive compliance due to the nature of such agreements and the likelihood that they may be shared beyond CMS.

While THA understands the need for CMS to be able to analyze hospital compliance with Section 1877 of the Social Security Act, CMS will be best served by a process that is established to foster compliance in a manner generates the most reliable information. Thank you for your time and attention. THA is willing to work with you to ensure the

appropriate collection of data to support CMS in analyzing hospital compliance with the Stark law. If you have any questions about these comments, please contact Michelle Long, Sr. Vice President and General Counsel, at 615/401-7439 or mlong@tha.com.

Kindest regards,



Craig A. Becker
President

cc: Leslie Norwalk, Esq.
Acting Administrator
Centers for Medicare & Medicaid Services
Hubert H. Humphrey Building
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