

## **CMS Greatly Expands Physician Investment Disclosure Requirements**

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As part of the 2009 IPPS final rule, CMS expanded the Provider Agreement requirements relating to physician investment disclosures for hospitals wholly or partially owned by physicians, 42 C.F.R. §489.20(u). Notably, CMS now requires physician owned hospitals to amend their policies and procedures and medical staff bylaws to require physicians to provide written notification to patients of the physician's investment at the time of the referral. CMS also expanded the definition of physician owned hospitals to include immediate family members (see Section III below).

### **Enforcement**

To provide a mechanism for enforcement, CMS amended the federal regulations to permit CMS to terminate a hospital's Medicare provider agreement if the physician-owned hospital fails to comply with the new physician investment disclosure requirements.

### **Prior Rule: Effective October 1, 2007.**

Since October 1, 2007, hospitals which are wholly or partially owned by physicians have been required, as part of the hospital's Provider Agreement, to provide written notice to all patients of the fact that the hospital has physician owners or investors. This written disclosure by the hospital must be provided at every inpatient and outpatient admission or intake and must advise patients of the right to view the entire list of owners, regardless of their ownership percentage.

### **Medical Staff Membership Requirements.**

Effective October 1, 2008, CMS substantially expanded the 2007 rule and now requires hospitals with physician investors to develop policies and procedures **“to require all physicians who are members of the hospital's medical staff to agree, as a condition of continued medical staff membership or admitting privileges, to disclose in writing to all patients whom they refer to the hospital any ownership or investment interest in the hospital held by themselves or by an immediate family member.”** 73 FR 48687. As a result, the physician's medical staff membership application, admission policies, and, if feasible, Medical Staff Bylaws should be amended to contain the new requirement. Note, revising the medical staff bylaws may be an obstacle unless the medical staff consents to the amended bylaws.

The new rule puts the compliance burden squarely on hospitals. As a result, physician owned hospitals are required to ensure physicians provide written

notification of the investment to patients *in addition* to providing patients with its own notification that the hospital has physician investors and a list of the investors is immediately available upon request. It is important to note that although the physician notification and the hospital notification requirements are two separate requirements, hospitals are responsible for implementing and enforcing both. Moreover, failure to comply can result in the termination of the hospital's provider agreement.

**Disclosure Required for Immediate Family Members.**

The final rule also expanded the definition of physician owned hospital to include those hospitals wholly or partially owned by a physician's immediate family member(s). As a result, CMS now requires the physician investor disclosure list to include the physician investors as well as the physician's immediate family members. 42 CFR 411.351 defines immediate family member as "husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild." If any immediate family member of a physician invests in the hospital, they must be included on the list.