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**Where a physician-owned lithotripsy partnership contracts with a hospital to provide a lithotripter and skilled technician "under arrangements," may the hospital pay for such services using a per-use or percentage-based compensation formula**

**Feedback**

Where a physician-owned lithotripsy partnership contracts with a hospital to provide a lithotripter and skilled technician "under arrangements," may the hospital pay for such services using a per-use or percentage-based compensation formula without violating the physician self-referral law?

**Answer**

Yes. Under certain circumstances, a hospital may use a per-use or percentage-based formula to compensate a physician-owned lithotripsy partnership that provides a lithotripter and skilled technician to the hospital on an "under arrangements" basis without violating the physician self-referral law.

Currently, lithotripsy is not considered a designated health service for purposes of the physician self-referral law. Therefore, if the physician owners of the lithotripsy partnership make referrals to the hospital for lithotripsy services ONLY, the physician self-referral law would not be implicated, and a per-unit or percentage-based compensation formula for the compensation arrangement between the lithotripsy partnership and the hospital would not be prohibited, even if the compensation arrangement is considered to be a lease of equipment (and other items or personnel).

If the physician owners of the lithotripsy partnership refer Medicare patients to the contracting hospital for any designated health services (DHS), the compensation arrangement between the lithotripsy partnership and the hospital must comply with an applicable exception to the physician self-referral law. Where a compensation arrangement between the hospital and the physician-owned lithotripsy partnership is considered to be a lease of equipment, a per-unit or percentage-based compensation formula would fail to satisfy the requirements of any of the potentially applicable exceptions for the lease of equipment found in §411.357(b), §411.357(l) or §411.357(p).

In Phase II, we recognized the common practice of many contractors to provide the tools of their trade in connection with service contracts (69 FR 16091). There, we did not require the use of the exception in §411.357(b) for the lease of equipment whenever equipment was provided as part of a service contract. The same applies in the case of lithotripsy services provided "under arrangements" to a hospital. Provided that a lithotripsy partnership is actually furnishing a service (or a package of services) to the hospital, and not merely leasing equipment over which the hospital would have dominion and control, the hospital may compensate the lithotripsy partnership using a per-unit or percentage-based compensation formula, as long as all of the requirements of a relevant exception are satisfied.

The answer provided addresses only the specific question presented and compliance with the physician self-referral rules. It does not address compliance with any other Medicare rules and regulations, including those regarding services provided "under arrangements" to a hospital.