



Client Alert

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Government Enters into Settlement Agreements with Hospitals and Health Systems Based on Allegations of Improper Payments to Physicians and Violations of the False Claims Act

The government's increased scrutiny on health care providers continues to result in large settlements. Recent settlement agreements entered into with hospitals and health systems demonstrate that the government is serious about improper payments to physicians and continues to vigorously pursue Medicare fraud and abuse.

St. John Health System

On December 22, 2009, St. John Health System (St. John), located in Tulsa, OK, entered into a \$13.2 million settlement with the Civil Division of the Department of Justice (DOJ). The settlement agreement with the DOJ resulted from the St. John's self-disclosure. In April 2008, St. John self-disclosed to the U.S. Department of Health and Human Services, Office of Inspector General (HHS-OIG) that between 2002 and 2008, it had entered into several arrangements with physicians and physician groups that violated the Stark Law and/or potentially the Anti-Kickback Statute and, accordingly, submitted false claims to Medicare associated with these arrangements. According to the DOJ Press Release, St. John made payments to 23 individual physicians or physician groups to induce referrals for medical services. The DOJ alleged that St. John submitted claims to Medicare and Medicaid that were tainted by the hospital's financial relationships with referring physicians. To view the press release click [here](#).¹

While the St. John settlement amount is substantial, it is probably a small percentage of what the damages could have been had St. John not voluntarily disclosed this matter to HHS-OIG pursuant to HHS-OIG's Provider Self-Disclosure protocol.

Arlington Memorial Hospital

On January 4, 2010, Arlington Memorial Hospital (AMH), without admitting any wrongdoing and denying liability, agreed to pay the U.S. government \$990,509.50 to settle allegations of civil False Claims Act violations. In August 2007, AMH's corporate parent self-disclosed to HHS-OIG that a physician group contract potentially violated federal law. As a result of the self-disclosure, HHS-OIG initiated an investigation in which Arlington Memorial Hospital fully cooperated.

¹ <http://www.justice.gov/opa/pr/2009/December/09-civ-1376.html>

AMH allegedly violated the civil False Claims Act (FCA) by submitting improper claims for payment to the Medicare program between July 1, 2003, and July 1, 2007, for pulmonology-related items and services. The U.S. Attorney's Office alleged that AMH's former president paid a physician group for interpretation of arterial blood gas (ABG) tests when the tests no longer required professional interpretation. Rather than modifying the arrangement or reducing compensation, the former president paid the physician group for uncompensated charity care and oversight of AMH's blood gas lab despite the fact that the contract indicated that the payments were for ABG test interpretation, not uncompensated charity care or oversight of the blood gas lab. According to the U.S. Attorney's Office, AMH knew that the ABG payments were not in compliance with federal laws and knowingly failed to eliminate payments to the group. The U.S. Attorney's Office contended that AMH knew that the ABG payments were not in compliance with the federal laws, and knowingly failed to eliminate payments to the group.

To view the DOJ press release click [here](#).²

Other Recent Settlements

On December 28, 2009, Michigan-based Genesys Health System entered into a settlement with the DOJ for \$699,413. The settlement resolved allegations that Genesys violated the FCA by overbilling for certain evaluation and management services provided to cardiology patients. The lawsuit was filed by a whistleblower who will receive \$133,882 as her share of the settlement. The settlement covers conduct that occurred between 2001 and 2007. Notably, the hospital may have been able to avoid the settlement and resolved the issue as an overpayment if the hospital had caught the billing issue through its own internal audit process. To view the DOJ press release click [here](#).³

On December 21, 2009, the DOJ announced that Trinity Health had agreed to pay \$205,000 to resolve allegations that its hospital, St. Joseph Mercy Oakland Hospital, had improperly billed Medicare for medical services performed by nurse practitioners, clinical nurse specialists and physician assistants, which it billed as if they were performed by either a neonatologist or an oncologist. The lawsuit was filed by a whistleblower who had previously been the director of physician billing for the hospital. To view the press release click [here](#).⁴

These recent cases reflect the impact that self-disclosing may have on decreasing the overall settlement amount. Furthermore, the recent cases highlight the importance of having an effective compliance program that encourages internal reporting of suspected problems and the importance of responding appropriately to reports of suspected problems.

² http://www.justice.gov/usao/txn/PressRel10/arlington_memorial_hospital_settle_pr.html

³ <http://www.justice.gov/opa/pr/2009/December/09-civ-1384.html>

⁴ http://www.justice.gov/usao/mie/press/2009/2009-12-21_trinityhealth.pdf

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