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HEALTH CARE LAW ALERT

Physicians Enter into Million Dollar False Claims Act Settlement based upon Stark Violations

On April 2014, the United States Attorney for the Northern District of West Virginia William J. Ihlenfeld, II announced a \$1 million dollar settlement with a physician and his professional corporation arising out of allegations that the physicians violated the federal physician selfreferral prohibition or "Stark" law. This case was Phase Two of an investigation that previously resulted in a \$3.8 million settlement being paid by three hospitals in 2011. In the press release for the 2011 settlement, the U.S. Attorney said the hospitals had agreed to cooperate in "Phase Two" of the investigation, which focused on the physicians who were parties to the compensation arrangements that had given rise to the Department of Justice investigation. Per the settlement, these arrangements violated the Stark law because the compensation was in excess of fair market value. According to the Report on Medicare Compliance, two problematic agreements were the basis for this settlement.¹ The first was for the Medical Director of the cardiac catheterization lab. The Department's position was that the significant annual compensation was not reasonable for a job that required only two to three hours of work per month. The second involved a salary paid for on-call services for a cardiac catheterization lab; however the physician was never - and likely would never be - called in because this was not an interventional lab. While Stark compliance has traditionally been a hospital concern, this recent settlement evidences a willingness by the Department of Justice to seek damages from the physician participants in non-complaint physician compensation arrangements. In the 2011 settlement, U.S. Attorney Ihlenfeld advised in the press release: "A physician who believes he is in violation of the Stark Act may come forward and self-report the noncompliance. While there are never any guarantees, self-reporting may lead to less formal and more lenient settlement proceedings depending upon the circumstances involved." The more recent press release quotes Ihlenfeld's view when there is no self-disclosure: "Medicare expects that a physician's referral of a patient to a hospital will be free from improper influences; and when it's not we will act to hold the wrongdoers accountable".

So, Stark compliance may not just be the hospitals' concern anymore.

¹ Report on Medicare Compliance, Vol. 23, Number 15, April 28, 2014

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