

HEALTH SYSTEM PAYS CLOSE TO \$4 MILLION TO RESOLVE SELF-DISCLOSED STARK VIOLATIONS

SUMMARY

On Wednesday, May 1, 2013, the U.S. Department of Justice ("DOJ") announced that it had reached a settlement with a two-hospital, Montana-based health system ("System") arising from financial relationships between the System and a combination of 139 employed and independent physicians and physician groups. Under the terms of the Settlement Agreement, the System agreed to pay \$3.95 million to settle potential Stark Law and False Claims Act violations related to the problematic arrangements. The Settlement Agreement resulted from a self-disclosure the System initially made to the U.S. Attorney's Office for the District of Montana in November 2009, before the Centers for Medicare and Medicaid Services implemented its Self-Referral Disclosure Protocol ("SRDP").

DETAILS

In the initial and supplemental written submissions to the DOJ, the System disclosed that between July 1, 2003 and December 31, 2009, the System paid 86 employed physicians incentive compensation that was based, in part, on the volume or value of referrals the physicians made to the System. According to its press release, the DOJ alleged that the System paid the employed physicians incentive compensation that took into account the value or volume of their referrals by improperly including certain designated health services in the compensation methodology.

The System also self-disclosed 53 other arrangements with independent physicians and physician groups that potentially violated the Stark Law. Although detailed information regarding these arrangements is not publicly available, the brief descriptions included in the Settlement Agreement indicate that a number of different types of physician relationships may have been implicated, including but not limited to medical director, clinical services and lease/sublease agreements, along with other unwritten compensation arrangements with referring physicians related to medical staff officer positions, speaker fees, supplies, use of conference room facilities and travel/meal reimbursement.

Note that the government did not impose a Corporate Integrity Agreement on the System as part of the settlement of this case, perhaps based on the System's decision to self-disclose the arrangements. The government did, however, name all 139 physicians and physician groups at issue in the Settlement Agreement. The System neither contested liability under the Stark Law nor admitted liability under the False Claims Act in the Settlement Agreement.

CONCLUSION/PRACTICAL TAKEAWAY

This settlement, along with a \$25.5 million settlement the DOJ recently announced with a health system resulting from another pre-SRDP self-disclosure, illustrates the significant risks related to how providers structure physician employee compensation and the need to enter into fully memorialized and executed arrangements documenting all financial relationships with independent referring physicians.

If you have any questions about compliance with the Stark Law or the False Claims Act or the self-disclosure process, please do not hesitate to contact:

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