News

Brownstein Hyatt Farber Schreck

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Halifax Pays $85 Million to Resolve Improper Physician Compensation Arrangement Claims Brought by Employee-Whistleblower

Since January 2009, the DOJ has recovered more than $13.4 billion through False Claims Act cases involving fraud against federal health care programs, and last month, Halifax Hospital Medical Center and Halifax Staffing, Inc. (collectively, “Halifax”) became the most recent contributor. Halifax recently settled with the United States Department of Justice (DOJ) for $85 million to resolve allegations that it violated the False Claims Act by submitting claims to the Medicare program that violated the Physician Self-Referral Law, commonly known as the Stark Law. The Stark Law prohibits an entity from billing Medicare for certain designated health services (DHS) referred by physicians who have (or whose immediate family member has) a financial relationship (ownership, investment, or compensation) with the entity, unless an exception applies. Here, the DOJ (which intervened on a Halifax employee whistleblower/relator *qui tam* action) alleged that Halifax knowingly violated the Stark Law by entering into physician employment agreements that provided improper incentive bonuses that were based on the value of outpatient prescription drugs and tests (both DHS under the Stark Law) ordered by the physicians. The DOJ also alleged that Halifax knowingly violated the Stark Law by paying three neurosurgeons more than fair market value for their services through questionable compensation structures that included fixed base salaries, incentive compensation bonuses equal to all cash collections over their annual base salaries (which routinely amounted to more than four times their respective base salaries), and non-memorialized compensation for call coverage services. Related claims brought under the Anti-Kickback Statute were dismissed prior to settlement due to the broad allowances of compensation structures for bona fide employment relationships amongst referral sources that do not exist under the Stark Law.

In addition to paying $85 million ($20.5 million of which will be paid to the Halifax employee whistleblower), Halifax agreed to enter into a Corporate Integrity Agreement with the United States Department of Health and Human Services’ Office of Inspector General, which obligates Halifax to undertake substantial internal compliance reforms and submit claims to federal health care programs to a costly independent reviewer for the next five years. By agreeing to these terms, Halifax avoided potential exclusion from federal health care programs, which is catastrophic to any provider.

Notably, Halifax only settled claims made (or potential claims yet to be made) by the whistleblower and the DOJ relating to the health care fraud angles of the alleged conduct. The Settlement Agreement explicitly reserved rights to seek recovery for potential liabilities under the Internal Revenue Code, criminal liabilities of Halifax or its directors and officers, as well as all claims brought by the whistleblower in which the DOJ did not intervene and that remain pending.

In its media statement on the settlement, an attorney for the DOJ stated: “The Department of Justice is committed to preventing illegal financial relationships that undermine the integrity of our public health programs.” Over two-thirds of the $19 billion recovered by the DOJ pursuant to False Claims Act enforcement actions since January 2009 have come from the health care industry, demonstrating the government’s focus on health care providers who may not be fully compliant with federal fraud and abuse laws and regulations.

DOJ's commitment to combat health care fraud and abuse mandates that providers make sure they have appropriately structured agreements and integration models to prevent being the next enforcement target. Moreover, sophisticated employees are also a real risk to providers who have not dedicated appropriate time and resources to establish effective compliance programs and regulatory diligence, as these employees can turn whistleblower under the *qui tam* provisions of the False Claims Act. In short, the enforcement heat is on, and the best way to safeguard your business is to ensure compliance at the outset of the arrangement or fix problematic arrangements as quickly as possible.

Brownstein Hyatt Farber Schreck's Health Law Group is comprised of a strong team of transactional attorneys, regulatory experts, litigators, and government relations professionals highly experienced in health care. We represent our clients on issues ranging from regulatory compliance and sophisticated transactions to managed care and health plan litigation, with offices across the West and in Washington, D.C.

Julie Sullivan. Health care regulatory and transactional matters, including advising on fraud and abuse, reimbursement and privacy rules and regulations, as well as structuring health care entity joint ventures, mergers and acquisitions.

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This document is intended to provide you with general information regarding the DOJ's commitment to combat health care fraud and abuse. The contents of this document are not intended to provide specific legal advice. If you have any questions about the contents of this document or if you need legal advice as to an issue, please contact the attorneys listed or your regular Brownstein Hyatt Farber Schreck, LLP attorney. This communication may be considered advertising in some jurisdictions.

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