



## All children's hospital system in Florida fights stark and False Claims allegations

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The All Children's Health System (All Children's) in St. Petersburg, Florida is embroiled in a civil lawsuit alleging that its financial relationships with 17 employed physicians violated the Stark Law and in turn, that the claims for payment that All Children's submitted to the Florida Medicaid program as a result of referrals from those 17 physicians were false claims that violated the False Claims Act as well as Florida state law.

The case was filed by a whistleblower who is the former Director of Operations for Pediatric Physician Services, Inc. (PPS), a Florida company wholly-owned by All Children's that manages physician staffing for the hospital and is responsible for "on-boarding" new physicians. In her role as the Director of Operations, the whistleblower was privy to employment information about the PPS physicians, including employment contracts, side letters and other documents related to their employment, including their salary and benefits. As the Director of Operations, the whistleblower developed a physician compensation model for PPS that compensated physicians between the 25th and 75th percentile based on several national salary surveys, a model approved by the PPS Board. However, according to the whistleblower's allegations, PPS ignored the approved compensation model and paid many physicians above the 75th percentile. According to the complaint, PPS entered into compensation agreements with physicians that resulted in a net operating loss to PPS but a "massive financial benefit" to All Children's hospitals.

Examples of the allegedly problematic employment compensation arrangements noted by the whistleblower in her [Second](#) and [Third](#) Amended Complaints in this lawsuit include:

1. PPS added new emergency room physicians with a base salary of approximately \$70,000 over the compensation rate at the 75th percentile, two of whom had just completed their fellowships and had no post-fellowship experience;
2. PPS bought a pediatric hematology/oncology practice at its highest estimated value (as determined by an outside valuation company) and agreed to pay its



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owner a salary that was \$90,000 above the highest salary reported in the national compensation surveys;

3. PPS hired a pediatric surgeon with a base salary “nearly \$200,000 more than the median fair market value salary for a pediatric general surgeon of his experience, and \$80,000 more than the 90th percentile”; and
4. PPS used “side letters” guaranteeing physicians additional compensation or benefits that were not part of PPS’s main employment agreements with the physicians, such as tail coverage, indemnification for defense of a noncompete lawsuit, and employment for the spouse of one of the recruited physicians.

This case has a couple of interesting aspects to it. First, it involves a children’s hospital. Children’s hospitals are often regarded as being relatively safe or almost “off limits” for Stark Law (and Anti-Kickback Statute) cases since children’s hospitals are often the “only game in town” as far as where pediatric patients can be referred for hospital-level care, ostensibly making it unnecessary to induce referrals to a children’s hospital. That said, there is nothing in the Stark Law (or Anti-Kickback Statute) exempting children’s hospitals from either law. While this case originally included allegations under the Anti-Kickback Statute as well as the Stark Law, the whistleblower’s Third Amended Complaint filed in April 2013 only includes allegations that the financial arrangements between All Children’s and the PPS physicians violated the Stark Law.

Second, as a children’s hospital, All Children’s submits very few claims to the Medicare program, which is what we usually see Stark Law allegations tied to. The All Children’s case doesn’t allege false claims were submitted to the Medicare program though; it alleges false claims were submitted to the Florida Medicaid program. All Children’s argued that the Stark Law referral prohibitions do not apply to the Medicaid program because CMS never finalized a rule regarding the Stark Law’s applicability to the Medicaid program. However, the U.S. District Court for Middle District of Florida sided with the whistleblower in concluding that the failure to finalize that rule did not mean that the Stark Law does not apply to Medicaid claims, and held that the referral prohibitions of the Stark Law do apply to Medicaid through 42 USC 1396b(s). That statute prohibits payment of the federal share of a Medicaid payment (i.e., the federal payment to the State to partially reimburse the State for Medicaid services rendered to eligible Medicaid beneficiaries in the State, which is referred to as federal financial participation, or FFP) “to states when the designated health service was provided ‘on the basis of a referral that would result in the denial of payment for the service under subchapter XVIII of this Chapter [Medicare] if such subchapter provided the coverage of such service to the same extent and under the same terms and conditions as under the [Medicaid] State Plan.’” Since the Stark Law is in subchapter XVIII, the District Court reasoned that “the substantive prohibitions contained in the Stark Amendment are therefore applicable to claims submitted to Medicaid....”

Finally, we are again seeing an attack on employed physicians, another area once considered relatively safe from Stark Law enforcement actions. But in the wake of the Tuomey case and other recent cases, we now know that is not the case. This is yet another example of compensation arrangements with bona fide employees being subjected to scrutiny as to whether they are consistent with fair market value and commercially reasonable.

This lawsuit is still in its preliminary stages. The United States declined to intervene in the lawsuit in the summer of 2012, but the case recently survived All Children's motion to dismiss in November 2013. We will continue to watch this case and will issue an updated bulletin as important developments occur.