



Recent False Claims settlement should serve as important reminder to all hospitals

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Saint Joseph Health System, Inc. [recently agreed](#) to pay \$16.5 million to resolve whistleblowers' claims alleging that it violated the False Claims Act by billing Medicare and Medicaid for unnecessary invasive heart procedures. The government intervened in the lawsuit, which was initially pursued by three area cardiologists asserting that, between 2008 and 2011, a number of coronary stenting procedures, pacemaker insertions, coronary artery bypass graft surgeries and diagnostic catheterizations performed at Saint Joseph Hospital in London, Kentucky, were not medically necessary. This case is worth noting because among the allegations against the hospital is an averment that the hospital knew, deliberately ignored or recklessly disregarded the fact that the cardiologists at issue were performing unnecessary cardiac procedures.

False Claims Act cases against hospitals are often based upon allegations that the hospital actively engaged in some activity that potentially violated the False Claims Act. However, a portion of the allegations against the hospital in this case related to whether the hospital knew the unnecessary procedures were occurring and, nonetheless, billed for those procedures. This case provides a good example of a hospital's duty to conduct thorough compliance monitoring in order to ensure that no systemic violations of federal or state law are occurring at the hospital.

Factually, in this case, the hospital entered into an exclusive professional services agreement with a physician-owned medical group that called for the group to provide cardiology services at the hospital. Accordingly, the medical group became the exclusive provider of cardiology services at the hospital. In addition, the lawsuit also alleged that the hospital violated the Stark Law and the Anti-Kickback Statute by entering into questionable management agreements that allegedly provided a financial inducement to two members of the physician-owned medical group to refer patients to the hospital. The \$16.5 million settlement reached in this case resolved all pending claims against the hospital.

Professional service agreements and management agreements between hospitals and physician groups are routinely entered into and can provide a significant benefit



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to patients. However, it is imperative that such agreements be legally structured. In this case, the government contended that the hospital engaged in impermissible conduct intended to maximize federal health program reimbursement based, in part, upon the questionable nature of the agreements between the hospital and the physician group. This case exemplifies the potential exposure one party to an agreement may have when the other party to the agreement comes under government scrutiny for the services provided under the agreement. Moreover, when there are allegations that a medical provider is performing unnecessary procedures at a particular hospital, it becomes more difficult for the hospital to credibly defend its own conduct when there are multiple agreements in place between the hospital and the medical provider at issue.

This case can provide a few important lessons to all hospitals. First, hospitals should carefully scrutinize any medical group with which the hospital is considering entering into a professional services agreement or management agreement. Hospitals should conduct due diligence regarding all such medical groups to ensure that each medical group is in full compliance with all federal and state laws. Second, after the hospital enters into such an agreement, it should continue to conduct monitoring of the medical group's practice in order to ensure the group remains in compliance with all federal and state laws.

Finally, even if the hospital is not currently contracting with a medical provider that provides services at the hospital's facility, the hospital should nonetheless conduct some type of compliance monitoring of all services provided at the hospital. A robust ongoing compliance program is a necessary tool that provides a line of defense for hospitals seeking to avoid potential False Claims Act liability.