



## Florida hospital system agrees to record-setting False Claims Act settlement

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Halifax Hospital Medical Center and Halifax Staffing Inc. (collectively Halifax) [recently agreed](#) to pay \$85 million to resolve allegations that Halifax violated the False Claims Act by submitting claims to Medicare that violated the Stark Law. The government intervened in the whistleblower lawsuit initially brought by a former Halifax compliance department employee. This case is worth noting as it is the largest penalty against a hospital for Stark Law violations, amounting to more than double the previous record of \$39 million.

The lawsuit asserted that Halifax knowingly violated the Stark Law by executing contracts with several oncologists that provided an incentive bonus that improperly included the value of prescription drug tests the oncologists ordered and Halifax billed to Medicare. The government also alleged that Halifax knowingly violated the Stark Law by paying three neurosurgeons more than the fair market value of their work.

The Stark Law prohibits a hospital from billing Medicare for certain services referred by physicians who have a financial relationship with the hospital unless an exception applies. Physicians generally may not be compensated in a manner that varies with the value or volume of Medicare services the physicians refer. Knowingly submitting claims to Medicare based on referrals that violate the Stark Law constitutes a violation of the False Claims Act, which opens the door to whistleblower lawsuits.

The neurosurgeons' compensation included a bonus equal to the difference between their base salaries and their collections, benefits and call pay. Had the case not been settled and continued to a trial before a jury, one of the government's witnesses would have testified at trial that the resulting compensation was more than double the compensation paid to other neurosurgeons whose compensation was in the 90th percentile for that specialty. Halifax in turn argued that the compensation was justified, commercially reasonable and fair market value.

Halifax paid the oncologists a base salary and permitted them to participate in a bonus pool that was equal to 15 percent of the operating margin of the Halifax oncology program. The government argued that this arrangement violated the Stark



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Law because the bonus pool consisted of a percentage of net profits from the physicians' oncology service line at the hospital. The bonus pool and the resulting compensation to the physicians therefore took into account not only the physicians' personally performed services but also the volume or value of their referrals. As the court noted in its ruling, "the size of the pool (and thus the size of each oncologist's bonus) could be increased by making more referrals." The court had already found in a November 13, 2013, pre-trial ruling that the compensation arrangements violated the Stark Law as a matter of law. The trial, which would have begun March 3, 2014, and which the \$85 million settlement avoided, would have involved both the amount of damages for Halifax's Stark Law violations and the asserted liability under the False Claims Act.

Initially, when it intervened in the case, the government demanded more than \$500 million from Halifax for the Stark Law violations. On the day jury selection was set to begin, Halifax agreed to the \$85 million settlement. The settlement also requires Halifax to enter into a five-year Corporate Integrity Agreement. Halifax did not admit to any wrongdoing.

This settlement does not resolve all claims pending in the lawsuit against Halifax. A trial scheduled for July will focus on whether the hospital improperly admitted patients for short-term stays who did not actually require inpatient care and then billed Medicare for the admissions. The government chose not to intervene in this portion of the lawsuit, meaning that the whistleblower's attorneys will try the case without government assistance.

This case is noteworthy not only because of the record-setting settlement, but also due to the important lessons that all hospitals should take away from the announcement. Hospitals should carefully review existing compensation arrangements with physicians for Stark Law compliance. New arrangements must be structured to fit squarely within the Stark Law employment or other exception. The overall value of these contracts must be scrutinized and justified as well. Finally, all hospitals should implement robust compliance programs that monitor overall compliance with the Stark Law, False Claims Act and other relevant laws and that respond quickly and appropriately to internal concerns regarding hospital conduct.