



Physician compensation problems cost Texas hospital over \$21 million

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On April 21, 2015, the United States Department of Justice (DOJ) announced a settlement of allegations against Citizens Medical Center (Citizens), a county-owned hospital located in Victoria, Texas. Citizens agreed to pay the United States \$21.75 million to settle allegations that it violated the federal False Claims Act (FCA) by engaging in improper financial relationships with physicians. The case was filed in August 2010 by three cardiologists who previously practiced at Citizens and became whistleblowers under the qui tam provisions of the FCA. The whistleblowers will share \$5,981,250 of the recovery.

The settlement resolved allegations that Citizens compensated several cardiologists in excess of fair market value for their services and paid bonuses to emergency room physicians that improperly took into account the value of their cardiology referrals in violation of the Stark Law and the FCA. The qui tam whistleblowers alleged that Citizens' physician compensation arrangements with several cardiologists and other specialists involved improper incentives in exchange for patient referrals to Citizens. Specifically, the whistleblowers alleged that:

- Citizens improperly paid significant bonuses, which comprised half of Citizens' Chest Pain Center's revenues, to emergency department physicians as an inducement for referring patients to the Chest Pain Center.
- Compensation paid to Citizens' employed cardiology groups was: (i) in excess of fair market value, (ii) far in excess of their prior private practice income, and (iii) included excessive employee benefits and below-market rate office space.
- Citizens improperly paid bonus compensation to gastroenterologists involved in Citizens' colonoscopy screening program that was based on patient referrals to Citizens.

Particularly concerning in the case was the whistleblowers' position that because some physicians earned higher salaries after becoming employed by Citizens, the compensation arrangements were in excess of fair market value and were entered

into to induce referrals. Also concerning was the whistleblowers' claim that Citizens continued to employ the cardiologists, despite incurring significant losses on the cardiologists' practices ranging from \$400,000 to \$1 million per year, only because of the volume and value of their patient referrals.

In its [announcement](#), the DOJ reiterated its "longstanding concerns about improper financial relationships between health care providers and their referral sources, because those relationships can alter a physician's judgment about the patient's true health care needs and drive up health care costs for everybody." The DOJ also stated that "[i]n addition to yielding a recovery for taxpayers, this settlement should deter similar conduct in the future and help make health care more affordable." United States Department of Justice Press Release dated April 21, 2015 (quoting Principal Deputy Assistant Attorney General Benjamin C. Mizer of the Justice Department's Civil Division).

This recent FCA settlement is an example of the continued aggressive pursuit by qui tam whistleblowers and the DOJ of FCA cases based on Stark violations involving alleged improper hospital-physician compensation arrangements. To avoid potential FCA liability, hospitals and physicians should carefully structure compensation arrangements to comply with applicable laws, including the federal Stark Law and anti-kickback statute.