

# Don't Ignore These 3 Multi-Million Dollar Financial Arrangement Fines

The DOJ and HHS implemented the Health Care Fraud Prevention and



Enforcement Action Team (HEAT) initiative in 2009 to combat healthcare fraud and abuse. HEAT has achieved many victories against healthcare providers and these three recent settlements illustrate that providers must be extremely vigilant when structuring their financial arrangements or they too may face large fines.

**\$27.6 Million Settlement for Consulting Agreement** Pharmaceutical manufacturer Teva Pharmaceuticals USA Inc. and a subsidiary, IVAX LLC, made payments to an Illinois physician to induce the prescription of generic clozapine, an anti-psychotic medication. Due to serious potential side effects, Clozapine is generally considered a drug of last resort, particularly for elderly patients. The physician agreed to switch his patients to generic clozapine if IVAX paid the physician \$50,000 under a one-year "consulting agreement." In addition, IVAX allegedly also provided all-expense paid trips to Miami for the physician, his wife, and several of his employees. The physician quickly became the largest prescriber of generic clozapine and prescribed the drug for many elderly patients. The payments and other forms of remuneration from IVAX (and later Teva) continued for many years and resulted in the submission of thousands of false claims to the Medicare Part D and Illinois Medicaid programs. The government alleged the arrangement violated the federal Medicare and Medicaid Anti-Kickback Statute because it involved "offering, paying, soliciting or receiving remuneration to induce referrals of items or services covered by Medicare, Medicaid and other federally funded programs." As a result, Teva and IVAX agreed to pay the federal government and the state of Illinois \$27.6 million to settle the government's allegations.

**\$85 Million Settlement for Incentive Bonuses** Florida based Halifax Hospital Medical Center and Halifax Staffing Inc., entered into contracts with six medical oncologists that provided an incentive bonus including the value of prescription drugs and tests that the oncologists ordered and Halifax billed to Medicare. Halifax also paid three neurosurgeons more than the fair market value of their work. The government alleged the agreements constituted violations of the federal Stark Law, which forbids a hospital from billing Medicare for certain services referred by physicians who have a financial relationship with the hospital. Halifax agreed to pay \$85 million to resolve the government's allegations. In addition, Halifax agreed to enter into a Corporate Integrity Agreement with the HHS Office of Inspector General, which obligates Halifax to undertake substantial internal compliance reforms and to submit its federal healthcare program claims to independent review for the next five years.

**\$8.5 Million Settlement for Joint Venture and Inflated Reselling** Ohio based Memorial Hospital (a nonprofit acute care hospital) entered into financial relationships with two physicians: a joint venture between Memorial and a pain management physician; and an arrangement

under which an ophthalmologist purchased intraocular lenses and then resold them to Memorial at inflated prices. Apparently realizing the potential illegality of these arrangements, Memorial disclosed them to the government. The DOJ concluded that the arrangements violated the federal Anti-Kickback Statute, False Claims Act, and Stark Law. The parties announced an \$8.5 million settlement this month to resolve the government's allegations. **Steps To Avoid Fraud and Abuse Claims** These settlements are just a recent sampling of HEAT initiatives. In fact, since 2009, the DOJ has recovered more than \$13.4 billion in fraud and abuse cases. Bolstered by its record of success, we expect the government will continue to emphasize its fraud-fighting efforts for the foreseeable future. As a result, healthcare providers must ensure their financial arrangements are not illegal. To make sure your payment arrangements are lawful, contact our experienced healthcare attorneys. We can help you mitigate the risks associated with financial relationships and maintain compliance with federal laws. Photo: Thinkstock/Winnieliao