

Health Care Providers to Pay \$24 Million Settlement Following Illegal Referral Allegations

Last month the U.S. Department of Justice announced it had reached a \$24.5



million settlement with several Alabama-based medical practices following a lawsuit that alleged the practices violated the False Claims Act. The settlement is another example of why all medical practices and hospital systems should pay close attention to payment arrangements and transactions related to claims to federal programs such as Medicare and Medicaid. In this week's post we will examine where the parties to the settlement with the Justice Department went wrong so you will know what to watch for. **Background** Infirmary Medical Clinic PC (IMC), owned by Infirmary Health System, purchased two medical practices, one in 1988 and the other in 2008. As part of the purchase, IMC agreed to pay the sellers a percentage of the revenues collected by the acquired practices in the years that followed. The revenue share agreement included revenues received as a result of billing Medicare, Medicaid, and other federal programs. In 2010 an attorney advised the parties involved that those payments likely violated the Stark Law. The government agreed and investigated potential violations of the Stark Law and the Anti-Kickback Statute. **Stark Law & Anti-Kickback Statute** The U.S. Department of Justice announcement of the settlement reminds the provider community that the Anti-Kickback Statute and the Stark Law "are intended to ensure that a physician's medical judgment is not compromised by improper financial incentives." These laws respectively place restrictions on (a) the "offering, paying, soliciting or receiving remuneration to induce referrals of items or services covered by federal health care programs" and; (b) hospitals and clinics from "billing Medicare for certain services referred by physicians who have a financial relationship with the entity." **Justice Department Allegations** The Justice Department alleged that the revenue sharing agreement was illegal and further, that even after learning of the potential illegality of the arrangement, the health system owned and physician owned practices continued the arrangement for another 18 months. And due to the length of time this arrangement was in place the total improper payments amounted to over \$500 million! As a result, the physicians and practices faced very large penalties and the potential damages likely contributed to the eventual settlement. The practices also agreed to enter into a Corporate Integrity Agreement (CIA) with the U.S. Department of Health and Human Services Office of Inspector General. Under the CIA each practice will be required to undertake "substantial internal compliance reforms" and also "submit its federal health care program claims to independent review for the next five years" according to the Justice Department. **What You Should Do** Before entering into a financial arrangement of any kind with a referral source or recipient of your referrals, you should first consult with a healthcare attorney to ensure the arrangement does not violate the law. And if you are already in such an arrangement that has not been reviewed by a healthcare attorney, you should consult with one as soon as possible to review your arrangement. If you have additional questions, our health care attorneys would welcome the opportunity to advise you regarding pending or existing financial arrangements and

compliance at any time. Image: Thinkstock/Ljupco **This article is very general in nature and does not constitute legal advice. Readers with legal questions should consult with an attorney prior to making any legal decisions.*