

HEALTH CARE LAW UPDATE

July 2006

Hospital Law Issues

Put It In Writing! Hospital Enters Into \$3 Million OIG Settlement

In June 2006, a hospital entered into a \$3 million settlement with the Office of Inspector General (OIG) in connection with a federal “whistleblower” case involving alleged violations of the False Claims Act and the federal Stark Law.

This case is significant because both (i) it demonstrates enforcement of the Stark Law provisions which require agreements with physicians to be in writing, and (ii) it demonstrates that federal prosecutors are actively pursuing False Claims Act cases against hospitals involving violations of the Stark Law.

Set forth below is a brief summary of the allegations and settlement in this matter, followed by a description of the significance of this matter and recommendations to hospitals to avoid similar liabilities.

1. The Allegations. The “whistleblower” lawsuit was filed under the False Claims Act in July 2003 by a vascular technologist employed in the hospital’s vascular laboratory from 2001 through 2004.

The technologist alleged that the hospital submitted claims for a physician’s interpretation of vascular laboratory tests, but that the physician routinely failed to conduct an independent review of the vascular test data, and instead, simply signed off on

the technicians’ interpretation and proposed diagnosis.

During the course of the government’s investigation of this matter, it learned that the hospital failed to execute written agreements with the physicians performing services at the vascular laboratory.

The federal Stark Law prohibits a physician from having an ownership or compensation relationship with an entity that bills Medicare for certain designated health services unless the relationship meets an applicable exception. Thus, because the Stark Law applied to the compensation relationship between the hospital and the physicians, in order to satisfy a required exception to the Stark Law, a written agreement was required.

Because a required exception to the Stark Law was not satisfied, the hospital’s billing for services provided by the physicians was illegal, and also formed the basis for the government’s contention that the hospital violated the False Claims Act by submitting claims for such services.

2. The Settlement. The government agreed to dismiss the lawsuit in exchange for \$3,039,388 and the hospital’s acceptance of a Certification of Compliance Agreement entered into with the OIG, which requires the hospital to adhere to certain

policies and procedures. The ex-employee whistleblower received over \$350,000 from the settlement.

3. Significance/Recommendations. This settlement demonstrates that failure to satisfy one of the most basic elements of a Stark Law exception - - having a written agreement with a physician - - can result in Stark Law violations, and that such Stark Law violations can form the basis of False Claims Act violations.

Hospitals should review all of their compensation relationships with referring physicians (such as leases, joint ventures, and service agreements of any kind) in order to ensure conformity with the Stark Law. As this settlement demonstrates, at a minimum, this means maintaining fully executed written agreements with physicians.

Other practical recommendations applicable to compensation relationships with physicians were set forth in our recent (June 2006) Health Care Law Update. If you would like a copy of such prior update, please call or email us. You can also visit our website at www.sillscummis.com to obtain a copy of our previous Health Care Law Updates.

We send these Updates to our clients and friends to provide information on recent developments in the law. The Updates, however, should not be relied on for legal advice in any particular matter. If you would like additional information, please contact Gary W. Herschman at gherschman@sillscummis.com or at 973-643-5783, or Anjana D. Patel at apatel@sillscummis.com or at 973-643-5097.

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