



## Alerts

### Stark Law Violations Stemming from Improper Incentive Compensation Paid to Employed Physicians Result in \$85 Million Settlement

**April 7, 2014**

*Health Law Alert*

On March 10, 2014, Halifax Hospital Medical Center and Halifax Staffing, Inc., entered into a settlement agreement with the U.S. Justice Department to resolve allegations that Halifax violated the False Claims Act by submitting claims to the Medicare program that violated the Stark Law. The settlement stems from a whistleblower complaint filed by Halifax's director of physician services under the qui tam provisions of the False Claims Act.

#### Background of Case

On November 13, 2013, the U.S. District Court for the Middle District of Florida ruled that Halifax Hospital violated the Stark Law, based upon an impermissible incentive compensation arrangement with six employed medical oncologists. The oncologist employment contracts entitled them to receive a salary plus a bonus equal to 15 percent of Halifax Hospital's operating margin for its Medical Oncology program, which included fees for designated health services (DHS) that were not personally performed by the oncologists, such as fees for outpatient prescription drugs, diagnostic imaging, and other outpatient services. The bonus pool was to be divided between the six oncologists based on each individual oncologist's personally performed services. Halifax argued that since the incentive compensation pool was divided based on each individual oncologist's personally performed services, the compensation arrangement fell within the bona fide employment exception. The court ruled that the incentive bonus was not 'based on' services personally performed by the medical oncologists, as required by the bona fide employment exception, even if it was 'divided up' based on services personally performed — thereby resulting in an impermissible financial relationship. The Halifax court further ruled that the bonus compensation formula was not appropriate because the percentage of operating margin formula varied with the volume or value of oncologist referrals. The court found that the oncologists' referrals for DHS during the three-year time frame in which the incentive compensation arrangement was in effect, and the submission of claims to Medicare for the DHS furnished pursuant to such referrals, constituted violations of the Stark Law.

Falsely certifying compliance with the Stark Law in connection with a claim submitted to Medicare is actionable under the False Claims Act. The case was set for trial in March 2014, on the government's claims that Halifax knowingly violated the Stark Law, resulting in False Claims Act violations. The government

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also alleged common law claims of payment by mistake and unjust enrichment.

Facing potential damages of up to \$1 billion, the parties entered into a settlement agreement on March 10, 2014, pursuant to which Halifax agreed to pay the sum of \$85 million within ten days of settlement. In addition to the settlement payment, Halifax is required to enter into a Corporate Integrity Agreement with OIG-HHS and to identify to Medicare fiscal intermediaries and to Medicaid fiscal agents any unallowable costs included in payments previously sought from such programs, and to repay any overpayments plus applicable interest and penalties arising from the inclusion of such unallowable costs.

### **Lessons for Providers**

This settlement illustrates the importance of ensuring that all compensation arrangements with physicians — independent or employed — fall under the protection of one of the narrowly construed Stark exceptions. Hospitals should immediately review and evaluate all existing employee or independent contractor compensation arrangements with physicians. Hospitals entering into new compensation arrangements with physicians should structure the relationships very carefully and exercise due diligence in documenting fair market value and commercial reasonableness. Hospital compliance officers should be proactive and implement an effective hospital-physician compensation contract management program that includes a risk assessment, contract approval process, and monitoring and auditing of hospital-physician compensation arrangements.

Hinshaw's Health Care Law attorneys have experience helping health care organizations structure contracts and transactions in a manner that complies with applicable Stark and Anti-Kickback laws, and can respond to any questions or issues you may have. Please contact [Michael A. Dowell](#) or your regular [Hinshaw attorney](#) if you have questions or would like additional information.

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