



Adelman, Sheff & Smith LLC

180 ADMIRAL COCHRANE DRIVE | SUITE 370 | ANNAPOLIS | MARYLAND | 21401 | TEL. (410) 224-3000 | WWW.HOSPITALLAW.COM

March 12, 2010

Compliance *Matters* ...

The Federal government has more resources than ever to detect and combat fraud and abuse, the following just to name a few: Recovery Audit Contractors – requesting medical records to review and determine if improper Medicare payments have been made; Zone Program Integrity Contractors (to replace Program Integrity Contractors) – expanded authority to identify and recover overpayments; new technology for identify improper claims and billing abnormalities; Medicaid Fraud Control Units; and new and expanded laws - Fraud Enforcement Recovery Act of 2009.

Just recently, the New York State Office of the Medicaid Inspector General (“NYOMIG”), adopted final regulations mandating compliance programs for individuals and entities that anticipate doing business in excess of \$500,000 with the NY Medicaid program and requiring the submission of written certification to NYOMIG. New York is the first state to make compliance programs mandatory with other states likely to follow.

Noteworthy Settlements

Recently, we have seen three settlements that began with the Office of the Inspector General (OIG) self-disclosure protocol whereby providers have a mechanism to bring potential violations to the attention of the government for resolution. Each of these settlements demonstrates the increased scrutiny being placed on hospital and physician relationships and compliance with Stark and the anti-kickback statute. Hospitals are advised to take special care in evaluating their physician relationships and ensuring that not only are there legally sufficient written agreements in place, but that the agreements are consistent with the actual relationship. Simply failing to obtain a signature or to include all of the services being provided by the physician in the written agreement can result in significant financial penalties.

Arlington Memorial Hospital – nearly \$1 million dollars to resolve allegations of improper physician payments

In a settlement that demonstrates the importance of auditing and reviewing physician contracts, Arlington Memorial Hospital in Arlington, Texas (AMH) self-disclosed to the OIG that a longstanding contractual relationship with a physician group for interpretation of arterial blood gas tests potentially violated the Stark law and Federal anti-kickback statute. AHM allegedly paid the physician group for unnecessary blood gas interpretation – the billed tests did not require professional interpretation. The Government alleged that instead of amending the contract and/or reducing the payment, AHM’s former President continued to pay the physician group as payment for uncompensated charity care and oversight services provided to the Hospital. While the payments made to the physician group may have been for real justifiable services, the failure of the contract to accurately reflect the relationship runs afoul of the Stark law and potentially the Federal anti-kickback statute and cost this hospital almost \$1 million. This settlement is a perfect example of the importance of establishing a process and mechanism for reviewing physician relationships and ensuring that the relationships are properly documented.



St. John Health System - \$13 million dollars to settle False Claims Act Allegations

St. John Health System in Tulsa, Oklahoma entered into a \$13.2 million settlement with the U.S. Department of Justice (DOJ) to resolve potential False Claims Act violations that had been self-disclosed to OIG by St. John back in 2008. St. Johns disclosed to the OIG that several of its arrangements with physicians and physician groups violated the physician self-referral law (commonly referred to as “Stark”) and potentially the Federal anti-kickback statute. Specifically, St. John submitted claims to Medicare and Medicaid that were tainted by its relationship with referring physicians. While the underlying facts of the case have not been disclosed, generally speaking it is alleged that St. John made payments to referring physicians and physician groups to induce referrals of medical services. It is our understanding, although not confirmed, that this case involved relatively minor infractions demonstrating that even technical violations of the Stark law can result in a significant financial settlement.

Piedmont Hospital Inc. - \$126,000 in Civil Monetary Penalties

While the dollar amount is not as startling as many of the settlements we are used to seeing from the OIG, this case is representative of the fact that no violation is too small for the OIG to pursue and seek penalties. Piedmont Hospital located in Atlanta, Georgia self-disclosed to the OIG twenty-two physician relationships that failed to meet the Stark and anti-kickback requirements. Namely, the arrangements involved payments for services performed where a fully-executed written agreement was not in place, payments where the rates paid to the physician differed from the rates set forth in the written agreement, and payments made for services not contained in a written contract. Again, the services that were provided were entirely appropriate and reasonable; it was only the failure to comply with the technical requirements of the Stark regulations that resulted in the civil monetary penalty.

For more information about this update or any other compliance related matters, please feel free to contact us at 410-224-3000.