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DOJ AND HOSPITAL SYSTEM AGREE TO \$85 MILLION SETTLEMENT TO RESOLVE ALLEGATIONS OF MEDICARE FRAUD

On March 11, 2014, Halifax Hospital Medical Center and Halifax Staffing, Inc. (Halifax) reached a settlement (Settlement) with the Department of Justice (DOJ) for \$85 million. The Settlement follows a November 13, 2013, federal district court order finding that a physician compensation arrangement (Compensation Arrangement) between Halifax and six employed medical oncologists (Oncologists) from fiscal years 2005 and 2008 violated the federal Stark Law.

Under the Compensation Arrangement, each Oncologist received a base salary and a portion of a bonus pool. The bonus pool consisted of 15 percent of the annual profit margin (defined as revenue less expenses) of Halifax's medical oncology program. Halifax argued that the Compensation Arrangement satisfied the Stark Law's bona fide employment relationship exception, which permits productivity bonuses based on services personally performed by a physician. The Court found that, while the bonus pool was *allocated* based on services personally performed by the Oncologists, the bonus pool itself included revenue from services that were not personally performed by them, including fees for certain designated health services from referrals for prescription drugs and tests by the Oncologists to Halifax. In the November 13, 2013, ruling, the federal district court ruled that the arrangement violated the Stark Law, but because a genuine issue of material fact remained on the question of damages, the Court denied summary judgment as to the extent of the Stark Law violation. The case was scheduled for trial when the parties reached this settlement.

The Settlement, which requires Halifax to pay \$85 million plus attorney's fees over five years, resolves part of the lawsuit that the DOJ joined, including Stark Law claims regarding the Compensation Arrangement and allegations that Halifax paid three neurosurgeons in excess of fair market value. A separate part of the case, which carries potential damages and penalties in excess of \$240 million, still remains unresolved and is scheduled for trial in July 2014. That part will address allegations that for over a decade Halifax admitted patients for medically unnecessary short-term inpatient stays. The DOJ has not joined that part of the case.

The Halifax case arises out of a whistle-blower complaint filed in 2009 by an employee who alleged that Halifax violated the Stark Law by submitting Medicare claims related to services provided through referrals from physicians with whom Halifax had improper financial relationships. In connection with the settlement, Halifax has agreed to enter into a Corporate Integrity Agreement with the Department of Health and Human Services' Office of Inspector General. Under this agreement, Halifax's provider arrangements and federal health care program claims are subject to independent review. The whistle-blower is expected to receive \$20.8 million of the settlement.

HHS RELEASES GUIDANCE REGARDING DISCLOSURE OF MENTAL HEALTH INFORMATION

The Department of Health and Human Services (HHS) recently released [guidance](#) (Guidance) clarifying when the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule permits health care providers to disclose protected health information (PHI) of patients being treated for a mental health condition. The Guidance, presented in question-and-answer format, does not establish new regulations or requirements. Rather, it addresses frequently asked questions regarding existing HIPAA Privacy Rule restrictions with respect to a provider's ability to share mental health information with a patient's family members, law enforcement, and others involved in the patient's care.

While the Guidance does not have the force of law, it provides useful insight on how HHS reviews matters involving disclosure of mental health information. It is important to note that applicable state laws and/or regulations may place additional limits on a provider's disclosure of information related to mental health diagnosis and/or treatment.

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