

What Happened to Providers Who Violated Requirements Applicable to Payment Arrangements with Referring Physicians?

Elizabeth E. Hogue, Esq.

Office: 877-871-4062

Fax: 877-871-9739

E-mail: ElizabethHogue@ElizabethHogue.net

Many post-acute providers have established relationships with physicians who also make referrals to them. Such relationships may include payments for services provided as Medical Directors or consulting physicians. They may also include leases to rent space from referring physicians.

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Generally, providers that establish such relationships must meet the requirements of:

- the federal anti-kickback statute, and applicable exceptions or “safe harbors;”
- the federal so-called Stark laws and applicable exceptions; *and*
- requirements of state statutes and regulations in all states in which they do business.

The Stark laws do not apply to hospices.

Failure to meet these requirements has resulted in enforcement actions against a number of providers. Below are some examples of such actions.

San Jacinto Methodist Hospital (SJM), Texas, agreed to pay \$21,025.62 for allegedly violating the Civil Monetary Penalties Law provisions applicable to kickbacks and physician self-referrals. The OIG alleged that SJM entered into an arrangement with a physician for a Medical Director position, which included the physician occupying hospital space for private use and utilizing hospital personnel for clerical assistance related to the physician's private practice patient visits without any contractual entitlement to do so.

MedCare Home Health and its owner Wilfred Braceras, Florida, agreed to pay \$178,000 for allegedly violating the Civil Monetary Penalties Law provisions applicable to kickbacks. The OIG alleged that MedCare and Braceras paid kickbacks to a "coordinator" to induce the referral of home health care patients. The recipient of the kickbacks was not an employee, had no contract, and was paid based on the volume and value of the referrals. Braceras' home health care chain; B&B Holdings Enterprises, Inc. d/b/a South Eastern Health Management Association, Inc.; also entered into an addendum to the existing corporate integrity agreement.

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The King's Daughters' Hospital and Health Services, Indiana, agreed to pay \$391,500 for allegedly violating the Civil Monetary Penalties Law provisions applicable to kickbacks. The OIG alleged that the Hospital's compensation arrangements with employed physicians failed to comply fully with the Stark law's restrictions on productivity bonuses. Specifically, the physicians were compensated for services that they did not personally perform.

Valerie Tolley d/b/a Health Care Medical (HCM), Mississippi, agreed to pay \$100,000 for allegedly violating the Civil Monetary Penalties Law provisions applicable to kickbacks. The OIG alleged that HCM made payments and attempted to make payments of kickbacks in exchange for direct and indirect patient referrals.

Iverson Hospital, Wyoming, agreed to pay \$635,000 for allegedly violating the Civil Monetary Penalties Law provisions applicable to kickbacks. The OIG alleged that Iverson paid prohibited remuneration to physicians in the form of free rent, equipment and furnishings, leases at less-than-fair-market value, reimbursement for medical-director services in excess of fair-market value, and reimbursement in excess of the requirements of an income-guarantee agreement.

Bioscrip, Inc. and Bioscrip Pharmacy, Inc. (Bioscrip); agreed to pay \$795,000 for allegedly violating the Civil Monetary Penalties Law provisions applicable to kickbacks and prohibited physician self-referrals. The OIG alleged that Bioscrip stationed a pharmacist from its West Hollywood, California pharmacy at two physician practices and that, while on-site at the physician practices, the pharmacist provided services for the pharmacy with the practices as well as services that benefitted the physician practices without a lease. These services included those that otherwise would have been provided to patients by the physician practices. Patients of the physician practices, including those counseled by the on-site Bioscrip pharmacist, were referred to and filled prescriptions paid for by the Medicare Part D program at a Bioscrip pharmacy.

Spartanburg Regional Healthcare System, South Carolina, agreed to pay \$780,000 for allegedly violating the Civil Monetary Penalties Law provisions applicable to kickbacks. The OIG alleged that Spartanburg provided information technology (IT) resources to non-employee physician groups without written contracts in place. Specifically, Spartanburg reported that it failed to document IT agreements with ten different physician practices/groups and also failed to bill and collect for those IT resources.

Providers must be scrupulous about compliance with all applicable requirements when they establish relationships with referring physicians that involve payments to them. The costs of non-compliance may be high, as demonstrated above.

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