

Report on Medicare Compliance Volume 28, Number 37. October 21, 2019 In Threat to Productivity Compensation, Court Revives Stark Case Against UPMC

By Nina Youngstrom

In a decision that throws cold water on a popular physician compensation method, the U.S. Court of Appeals for the Third Circuit resuscitated a False Claims Act^[1] (FCA) lawsuit against the University of Pittsburgh Medical Center (UPMC) and University of Pittsburgh Physicians over its compensation for the neurosurgeons.^[2] A federal district court had twice dismissed the case, but the appeals court reversed the lower court. The appeals court found grounds for the whistleblowers to proceed with their allegations that the neurosurgeons' compensation, which is based on work relative value units (RVUs) for base salary and productivity, takes into account the volume or value of their referrals to UPMC hospitals, according to the Sept. 17 ruling.

"The surgeons' contracts make it very likely that their pay varies with their referrals. And the relators also make a plausible case that the surgeons' pay is so high that it must take referrals into account," the appeals court stated. "All these facts are smoke; and where there is smoke, there might be fire."

Attorneys are worried about the decision's impact on compensation arrangements. The ruling "shows both the power and danger of the Stark Law and the False Claims Act qui tam provisions," said Jonathan Diesenhaus, an attorney for the defendants, Sept. 26 at the Fraud and Compliance Forum sponsored by the American Health Lawyers Association. On Oct. 15, he filed a notice for rehearing and rehearing en banc before the Third Circuit. The petition argued that the appeals court interpreted Stark in a manner that hasn't been embraced by CMS or the Department of Justice (DOJ),^[3] as CMS indicated in proposed regulations it announced Oct. 9.^[4]

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