

Report on Medicare Compliance Volume 28, Number 43. December 09, 2019 Hospital Pays \$12M to Settle FCA Case on Overlapping Surgeries, Stark Violations

By Nina Youngstrom

Former patients of a surgeon at Lenox Hill Hospital in New York City who alleged violations of Medicare rules on overlapping surgeries and the Stark Law^[1] are the whistleblowers behind a False Claims Act^[2] (FCA) settlement, an unusual situation because employees generally file these cases. Lenox Hill Hospital agreed to pay \$12.3 million in connection with allegations that urologist David Samadi performed “critical or key portions” or the “entire viewing” of two procedures at the same time, one with a surgical robot, the U.S. Attorney’s Office for the Southern District of New York said Nov. 8.^[3] Lenox Hill’s parent, Northwell Health, is also a party to the settlement.

The complaint in intervention filed by the U.S. attorney Nov. 4 connects the two sets of allegations: The hospital approved Samadi’s practice of overlapping surgeries to generate more reimbursement, because it paid him an amount that exceeded fair market value compensation and wasn’t commercially reasonable without his referrals.

Patient whistleblowers are rare, but there have been other instances of FCA cases brought by people who aren’t insiders, says Washington, D.C., attorney Reuben Guttman, one of the attorneys who represented the whistleblowers. “Most of these cases are brought by employees or [other] insiders, but the statute doesn’t preclude others who have cases based on nonpublic information or other original information.”

Overlapping surgeries are just what they sound like—two surgeries performed almost at the same time. In the teaching context, Medicare allows surgeons to bill for two overlapping surgeries if the “critical or key portions” don’t take place simultaneously. “When all of the key portions of the initial procedure have been completed, the teaching surgeon may begin to become involved in a second procedure,” according to Chap. 12 of the *Medicare Claims Processing Manual*.^[4] “The teaching surgeon must personally document in the medical record that he/she was physically present during the critical or key portion(s) of both procedures. When a teaching physician is not present during non-critical or non-key portions of the procedure and is participating in another surgical procedure, he/she must arrange for another qualified surgeon to immediately assist the resident in the other case should the need arise.”

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