

# Report on Medicare Compliance Volume 27, Number 34. October 01, 2018 FCA Lawsuit Against Hospital Alleges M.D. Compensation Included NPPs

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By Nina Youngstrom

The former director of internal audit at Lee Memorial Hospital in Florida has filed a False Claims Act (FCA) lawsuit against the hospital that alleges the Stark Law was violated because certain employed physicians were paid too generously and for services they didn't personally perform. The physicians' compensation allegedly included credit for the work of hospital-employed physician assistants (PAs) and nurse practitioners (NPs), which helped push it above fair-market value and out of the Stark employment exception.

"This is a situation where there is no way in this market these doctors should be getting this much money, especially when the defendants claimed they are being paid for personally performed services based on a relative value unit model," says Atlanta, Georgia, attorney Marlan Wilbanks, who represents the whistleblower.

It is possible, however, for hospitals to pay physicians for services performed by nonphysician practitioners (NPs and PAs) without violating the Stark Law, says attorney Bob Wade, with Barnes & Thornburg in South Bend, Indiana. Two methods: the Stark in-office ancillary services exception and a net revenue model. "It's only if you get into a productivity compensation model and the productivity of the NPP is being credited to the physician that it's inappropriate" with employed physicians, he says.

That's one of the allegations against Lee Memorial Hospital, a public hospital district in Lee County with four acute-care hospitals and two specialty hospitals. It was filed by Angela D'Anna, who was system director of internal audit from October 2003 to June 2014. She alleged compensation for three types of specialists—cardiologists, pulmonologists and neurosurgeons—employed by the hospital didn't qualify for the employment exception to the Stark Law in part because the compensation allegedly wasn't fair-market value and wasn't based entirely on services that were personally performed by the physicians. The specialists benefited from the services performed by physician extenders (NPs and PAs) through their work relative value units (RVUs), which capture the volume of patients treated and the effort that goes into it, the whistleblower alleged.

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