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Health System Settles Case Over Assistants at Surgery; Certifications Magnify the Risk

By Nina Youngstrom

University of Miami Health System has agreed to pay \$289,573 in a settlement with the HHS Office of Inspector General (OIG) over payments for assistants at surgery. This area rarely bubbles to the surface, but it's lurking because assistants at surgery in teaching hospitals are required to certify their services were medically necessary and no resident was available to perform them, or report a modifier to that effect, an attorney said. Alleged noncompliance with Medicare regulations on assistants at surgery also is at the heart of an unrelated False Claims Act (FCA) lawsuit.

“This is another great example of a rule buried at the end of a Code of Federal Regulations subpart, but if you mess it up, it can get you in serious trouble,” said attorney David Vernon, with Hooper Lundy & Bookman in Washington, D.C. It involves a judgment call by the attending surgeon that another attending physician should be the assistant at surgery instead of an available resident, said attorney Asher Funk, with Troutman Pepper in Chicago. “The assistant at surgery rules and the use of attending physicians supporting the primary attending in a teaching hospital is a compliance issue that providers need to be aware of. It's a risk area.”

According to the civil monetary penalty settlement, obtained through the Freedom of Information Act, OIG alleged that University of Miami Health System submitted claims to Medicare, Medicaid and TRICARE for items or services it knew or should have known were fraudulent. Between July 1, 2011, and June 30, 2017, University of Miami Health System submitted claims for the services of an assistant at surgery in a teaching hospital for two employed physicians who didn't comply with the conditions of payment under 42 C.F.R. §415.190. Medicare pays extra when the assistant at surgery is not the resident and bills Part B separately.

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