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UPMC Settles FCA Case on Overlapping Surgeries, Agrees to External Audit but Not CIA

By Nina Youngstrom

In a false claims settlement that includes an unusual audit requirement, University of Pittsburgh Medical Center (UPMC), University of Pittsburgh Physicians (UPP) and James L. Luketich, M.D., agreed to pay \$8.5 million over allegations they billed for overlapping surgeries in a way that violated Medicare regulations, the U.S. Attorney's Office for the Western District of Pennsylvania said Feb. 27.^[1] Luketich, a cardiothoracic surgeon employed by UPMC, allegedly performed up to three surgeries at the same time without always being present for the "critical or key" portions and left some patients under anesthesia for hours while he attended "to other matters," according to the False Claims Act (FCA) complaint filed by the Department of Justice (DOJ).^[2]

The defendants declined to enter into a corporate integrity agreement (CIA) as part of the FCA settlement, however, and therefore were added to the HHS Office of Inspector General's (OIG) high-risk category, which subjects them to "heightened scrutiny," according to OIG's Fraud Risk Indicator.^[3]

UPMC, UPP and Luketich deny the allegations.

Something helpful for all teaching hospitals and physicians may come out of the settlement. It includes a unique provision allowing UPMC—on its own or with other health systems or teaching hospitals—to send a letter to CMS asking for guidance and/or an advisory opinion on the teaching physician regulation, the parts of the Medicare Claims Processing Manual related to the teaching physician regulation and/or "the application of those provisions to the types of surgeries at issue in this Civil Action," according to the settlement.^[4] CMS must respond to the letter, if it materializes, as soon as possible or by a date that CMS and UPMC agree on.

"That provision could be viewed as an admission on the part of the government that teaching physician regulations and manual guidance are not entirely clear," said attorney Lauren Gennett, with King & Spalding in Atlanta, Georgia.

The settlement is the latest in a series about overlapping surgeries. Last year, Massachusetts General Hospital agreed to pay \$14.6 million to settle false claims allegations about overlapping surgeries and add language to its informed consent for patients that "my surgeon has informed me that my surgery is scheduled to overlap with another procedure she/he is scheduled to perform," according to its settlement with DOJ, the Massachusetts attorney general and the whistleblower.^[5] In 2021, Neurosurgical Associates LTD and St. Joseph's Hospital in Phoenix, which is part of Dignity Health, agreed to pay \$10 million to settle false claims allegations over billing Medicare for certain concurrent and overlapping surgeries.^[6]

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