

Report on Medicare Compliance Volume 32, Number 21. June 05, 2023 After Self-Disclosing During Investigation, Provider Settles FCA Case

By Nina Youngstrom

In a settlement that hinged partly on a self-disclosure in the middle of a whistleblower-fueled investigation, Massachusetts Eye and Ear Infirmary, Massachusetts Eye and Ear Associates Inc. and the Foundation of the Massachusetts Eye and Ear Infirmary Inc. have agreed to pay \$5.7 million to settle false claims allegations that compensation for 44 physicians violated the Stark Law, the U.S. Attorney's Office for the District of Massachusetts said May 24.^[1]

Massachusetts Eye and Ear Infirmary (MEEI) is a teaching hospital and Massachusetts Eye and Ear Associates is a physician group mostly comprised of ophthalmologists and otolaryngologists who perform medical services at MEEI's clinical locations. The foundation is the parent group of MEEI, Massachusetts Eye and Ear Associates and other entities. On April 1, 2018, the defendants were bought by Partners HealthCare System, which changed its name to Mass General Brigham on Nov. 27, 2019.

About six months after the acquisition, otolaryngologist Allan Goldstein filed a whistleblower lawsuit against his former employer, Massachusetts Eye and Ear Associates, as well as MEEI and the foundation. Goldstein, who died in February 2021, alleged the defendants violated the Stark Law and Anti-Kickback Statute (AKS). According to his complaint, they allegedly encouraged physicians to order outpatient services at MEEI outpatient departments by paying them bonuses from the facility fees. After Goldstein died, his estate continued the case on the government's behalf.

The whistleblower's complaint centered on the way that MEEI shared revenue with certain physicians who performed services at the hospital's outpatient departments/provider-based space.^[2] Medicare pays physicians a lower professional fee for services performed in hospital outpatient departments (HOPDs), but it also pays the hospital a facility fee. "The receipt of facility fees gives MEEI a strong financial incentive to have [Massachusetts Eye and Ear Associates'] physicians practice in its hospital outpatient departments rather than in office-based locations," the complaint alleged.

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