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### ChristianaCare Settles FCA Case Over APPs for \$47M; Former CCO Alleged He Was 'Shut Down'

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By Nina Youngstrom

When Ronald Sherman was the chief compliance officer at ChristianaCare Health Services in Delaware, he became aware that the services of its employed advanced practice providers (APPs) were allegedly being provided free to certain nonemployed physicians who billed for them under global neonatal and surgery codes. After the compliance officer brought this to the attention of top executives, they developed rules “designed to immediately put an end to any potential violations within the entire surgery department,” according to Sherman’s 2017 whistleblower complaint.<sup>[1]</sup> But as far as he could tell, nothing changed, and Sherman would later say in a deposition that he was “marginalized.” His complaint alleged that ChristianaCare provided the free or below-cost services of APPs to induce physician referrals in violation of the Anti-Kickback Statute (AKS) and Stark Law and that led to the submission of false claims.

Now ChristianaCare has agreed to pay a total of \$47.1 million in separate false claims settlements with the U.S. Department of Justice (DOJ)<sup>[2]</sup> and Delaware Attorney General (AG).<sup>[3]</sup> The settlements were announced by the AG and the law firm representing the whistleblower, but not DOJ. No corporate integrity agreement (CIA) is required as part of the settlement.

“Any hospital in the United States that is engaging in this behavior should strongly consider putting an immediate stop to it,” said attorney Dan Miller, with Walden, Macht & Haran LLP, the whistleblower’s law firm.

ChristianaCare denies the allegations, which were fully investigated when they arose, said Shane Hoffman, director of communications. “We retained experts and outside counsel to work with us and review the matter. We determined that we were in compliance with all laws and regulations pertaining to the use of advanced practice clinicians to coordinate and provide continuity of care,” he told RMC. Hoffman added that “ChristianaCare has consistently disputed the claim that the compliance officer was marginalized or the investigation shut down.”

When some of the alleged violations transpired, Christiana Care was under a five-year CIA as part of an unrelated 2010 Stark-based False Claims Act (FCA) settlement.<sup>[4]</sup>

The use of hospital-employed APPs may be dicey if it comes off as a benefit to independent physicians, but it has its place, said attorney Holley Thames Lutz, with Dentons US LLP in Washington, D.C. Team-based care is a fact of life and has CMS’s seal of approval, she said, and ChristianaCare’s settlement seems to acknowledge this reality. It states that “when patients are hospitalized after a surgical procedure, surgical providers are sometimes permitted to bill for a series of services, commonly referred to as a global surgical package, that encompasses services provided directly by the surgical provider as well as additional services provided by ancillary support providers at the hospital.” The government appears to be saying, “There are times where collaborative team-based care can involve more than just the surgeon and the surgeon can still get the global surgical fee,” Lutz said. “It’s a good thing if that’s what they really mean. They’re almost nodding that the glass is half full.”

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