

Report on Medicare Compliance Volume 33, Number 18. May 13, 2024 Baptist Health Settles FCA Case Over Copay Waivers, Benefited From DOJ Cooperation Credit

By Nina Youngstrom

The cooperation credit that Baptist Health System in Florida earned jumps out in its False Claims Act (FCA) settlement with the U.S. Department of Justice (DOJ) over waivers of patient copays, coinsurance and deductibles.^[1] DOJ alleged that Baptist Health subsidiaries offered these discounts to certain groups of patients to coax them to receive or refer services there.

Baptist Health agreed to pay \$1.5 million in the civil settlement, which was announced May 6, after it self-disclosed the discounts to the government.^[2] Although cooperation credit typically evokes images of self-disclosures, cooperation and remediation with respect to corporate crimes resolved with the DOJ criminal division, the same goes for the FCA vis-a-vis the civil division, as set forth in the *Justice Manual*.^[3] Waivers of copays, coinsurance and deductibles may run afoul of the Civil Monetary Penalties Law (CMPL) and Anti-Kickback Statute (AKS) because they're potentially a form of remuneration to reel patients in for services. If the discounts qualify for a safe harbor, however, they would be immune from AKS prosecution.

The specific reference to cooperation credit in the FCA settlement is a flashing light from a DOJ bent on creating a regime focused on effective compliance, said Anthony Burba, a former DOJ health fraud prosecutor. "There's clearly an intentional and concerted effort by DOJ to promote its resolutions arising out of self-disclosures," said Burba, with Barnes & Thornburg LLP in Chicago, which wasn't involved in the case. "They're mentioning it because it's a relatively new policy, and it's a huge point of emphasis for this particular DOJ. They want to identify all the wins they get as much as they can."

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