

Report on Medicare Compliance Volume 33, Number 24. July 01, 2024

Baylor Settles FCA Case on Overlapping Surgeries; Surgeons Allegedly Skipped Time-Outs

By Nina Youngstrom

In the largest false claims settlement ever about overlapping surgeries, Baylor St. Luke's Medical Center, Baylor College of Medicine and Surgical Associates of Texas P.A. (SAT) have agreed to pay \$15 million to settle allegations they submitted Medicare claims for high-risk heart surgeries that surgeons performed two at a time, the U.S. Attorney's Office for the Southern District of Texas said June 24.^[1] The government alleged the defendants violated Medicare regulations when they billed for procedures performed by three teaching surgeons who often ran two operating rooms at the same time, falsely attested they were at the surgery and skipped the surgical time-out, which ensures the patient is having the right surgery, according to the settlement.^[2]

Baylor St. Luke's Medical Center is a joint venture between CommonSpirit Health, a national hospital chain, and Baylor College of Medicine in Houston. Baylor St. Luke's runs a teaching hospital at Texas Medical Center and Baylor College of Medicine employs teaching physicians, including Joseph Coselli and Joseph Lamelas, who provide services at Baylor St. Luke's, the U.S. attorney's office said. SAT is a medical practice affiliated with cardiothoracic surgeons, including David Ott.

The False Claims Act (FCA) case was set in motion by a whistleblower, Jeffrey Morgan, M.D., a former employee of Baylor College of Medicine. According to his complaint, Morgan became aware of the alleged "systematic practice of scheduling cardiothoracic surgeries to occur simultaneously with the same attending physician listed as the lead for each surgery."^[3] The surgeries included coronary artery bypass grafts, valve repairs and aortic repair procedures, the U.S. attorney's office said. The defendants didn't admit liability in the settlement.

Surgeons are expected to have concurrent cases in a teaching facility, but "this is one of the rare situations where there's a regulation requiring documentation," said attorney David Glaser, with Fredrikson & Byron. Medicare requires documentation of the physician's presence during the critical or key portions of the surgeries. "Presence during the whole procedure is neither required nor expected," he noted. Because the Baylor FCA lawsuit was settled, it's impossible to know exactly what happened, but the whistleblower alleged the surgeons sometimes attested to their physical presence during the entire surgery. "If the physicians were routinely documenting that they were present for the whole procedure, this was a self-inflicted wound that is difficult to fix retroactively because it calls the credibility of the record into question," Glaser said.

This document is only available to subscribers. Please log in or purchase access.

[Purchase Login](#)