

Report on Medicare Compliance Volume 33, Number 28. August 05, 2024 DOJ Files FCA Suit Against Erlanger for Alleged Stark Violations; Compliance Was 'Sidelined'

By Nina Youngstrom

When Erlanger Health System in Tennessee was under a corporate integrity agreement (CIA), then-Chief Compliance Officer Alana Sullivan played a big role in reviewing physician financial relationships. Before Erlanger signed a physician employment contract, Sullivan reviewed the documentation showing a need for the physician and the fair market value (FMV) assessment of the compensation. Any concerns she had were addressed before Erlanger green-lit the contract.

A few years after the CIA expired in 2010, things changed considerably for the chief compliance officer, according to a False Claims Act (FCA) complaint in intervention filed July 26 by the U.S. Department of Justice (DOJ) against Erlanger Health System and Erlanger Western Carolina Hospital.^[1] DOJ alleged Erlanger went on a hiring spree and shifted from a base clinical compensation model "to a model in which large additional payments were made to revenue-generating physicians," which pushed compensation for employed physicians above FMV in violation of the Stark Law from 2014 through 2021.

The compliance department was "sidelined," according to the complaint. Sullivan was made a non-voting member of the physician contracting committee and Erlanger allegedly told its physicians not to report compliance concerns to the chief compliance officer. "In October 2019, Erlanger Health System eliminated the role of Chief Compliance Officer and terminated Ms. Sullivan's employment," according to the complaint.

Two years later, Sullivan and former CFO J. Britton Tabor filed a whistleblower complaint and now DOJ has partially intervened. "This was really kind of deep rooted that compliance played a very weak sister to keeping referring doctors happy," said Marlan Wilbanks, an attorney for the whistleblowers. Because DOJ only intervened in the allegations with respect to compensation for employed physicians, the whistleblower lawsuit against Erlanger is continuing with respect to nonemployed physicians.

But according to LinkedIn, Erlanger had a new chief compliance officer, Julie Dean, in October 2019. She has since left, and Marti Arvin is at the compliance helm.

In a statement, Erlanger said "We are disappointed by the U.S. Department of Justice's decision to partially intervene in this litigation, but we are pleased that the government narrowed its focus to Stark Law claims and declined to intervene as to the Anti-kickback Statute allegations. Erlanger set compensation for its employed physicians based on amounts that outside consultants advised was fair market value. We fully expect that a complete picture of the facts will demonstrate that the government's allegations are entirely without merit and we will vigorously defend our practices in the months ahead."

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