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Hospital, Doctors Pay \$3M to Settle CMPL Case Over Cath Lab Lease

By Nina Youngstrom

Saint Peter's University Hospital and New Brunswick Cardiac Cath Lab LLC in New Jersey have agreed to pay \$3.04 million to settle a civil monetary penalty case about lease payments. The settlement is an example of Stark and kickback allegations based on structural violations, without any mention of fair market value or commercial reasonableness, an attorney said.

According to a settlement with the HHS Office of Inspector General (OIG), Saint Peter's allegedly made lease payments to New Brunswick on a per-procedure basis from July 1, 2012, through June 30, 2018, and the cath lab paid its physician investors from the "per-click" payments. OIG alleged the lease payments were remuneration that violated the Civil Monetary Penalties Law (CMPL) applicable to physician self-referrals and kickbacks. The settlement, which was obtained through the Freedom of Information Act, said 24 individual physician investors and two physician group investors received payments.

The settlement stemmed from a self-disclosure by Saint Peter's and New Brunswick. They were admitted to OIG's Self-Disclosure Protocol in January 2019. The nature of the relationship between the respondents in the CMPL settlement isn't totally clear, but Saint Peter's appears to own New Brunswick. A phone call to the cath lab was answered with Saint Peter's name, and internet searches for the cath lab land back at Saint Peter's. No additional details were available, and attorneys for the hospital and lab didn't return RMC's requests for comment.

The Stark Law prohibits reimbursement for designated health services (DHS) that are referred by physicians who have a financial relationship with DHS entities, unless an exception applies. Two of the exceptions, for space and equipment rentals, prohibit payment per procedure (per-click) if the lessor is the source of the referrals, said attorney Bob Wade, with Barnes & Thornburg in South Bend, Indiana.

Unlike many other settlements, this one focuses on an alleged structural violation, not fair market value compensation, Wade said. The structure of the compensation—paying per procedure—is the problem, he said. "An arrangement may be commercially reasonable and fair market value, but if you don't comply with structural prohibitions, you can get into trouble," Wade said. "This gets back to my beating on the drum of real estate. People need to analyze real estate arrangements to make sure fair market value and the structure of the relationship are compliant."

Office space and equipment may be rented in blocks (e.g., for four hours at a time), but not per click, he said. "If the hospital is the owner of the space and the physician comes in to do a procedure, probably on hospital equipment, and pays for a fraction of time, the physician assumes no business risk," Wade explained. "If you're going to lease space, then you need to assume some type of business risk for use of that space." Otherwise, the hospital takes on all the risk. Wade noted that the exceptions for the rental of office space and equipment were established by statute, but the prohibition on per-click arrangements was created by regulation.

When hospitals and other health care organizations potentially run afoul of certain fraud and abuse laws, Wade generally thinks it's preferable for them to go the OIG self-disclosure route than send a check to their Medicare

administrative contractor (MAC). “I advise self-reporting because at the end of the day, you have a settlement agreement,” he said. “The parties are released from any [CMPL] liability for acts described in the settlement.” There’s a cost—they usually pay 1.5 times the amount of the overpayment for a six or possibly 10-year period—but if health care organizations repay the MAC, “they lose control” and possibly will be referred to OIG or the Department of Justice anyway. That could result in higher penalties and more legal fees, Wade said.

Unlike many Stark Law-related settlements, in this case both the physicians and the hospital are on the hook for the alleged violations, he said. “This is a joint settlement,” he noted. “That’s a good point to make for people negotiating these settlements, especially for physicians who participated in these arrangements.”

Saint Peter’s and New Brunswick didn’t admit liability in the settlement.

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