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ISSUE ALERTS

$6.8 MILLION SETTLEMENT UNDERSCORES NEED FOR CAREFUL MONITORING AND DOCUMENTATION OF MEDICAL DIRECTOR AGREEMENTS

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The U.S. Attorney's Office for the Southern District of New York recently announced a settlement agreement with New York-Presbyterian Hudson Valley Hospital (NYPHV), a hospital based in Cortlandt Manor, New York, under which NYPHV agreed to pay $6.8 million to resolve false claims allegations arising from violations of the federal Physician Self-Referral (Stark) Law and Anti-Kickback Statute. NYPHV also entered into a separate settlement agreement with the New York State Attorney General's Office, agreeing to pay $367,353 to resolve related Medicaid false claims allegations. The NYPHV settlements highlight the importance of healthcare organizations maintaining robust compliance protocols, ongoing monitoring, and clear documentation of their medical director agreements and other physician services arrangements.

The federal Physician Self-Referral (Stark) Law (42 U.S.C. § 1395nn) prohibits a physician from referring certain patients for defined "designated health services" payable by Medicare or Medicaid to an entity with which the physician has a financial relationship, unless an exception applies, and prohibits the entity from submitting claims for payment stemming from those prohibited referrals. Furthermore, the Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)) prohibits all healthcare providers from offering, paying, soliciting, or receiving anything of value to induce or reward referrals of services covered by federal healthcare programs. There are, however, exceptions and safe harbors under both the Stark Law and the Anti-Kickback Statute that protect "personal services" arrangements between entities and referring physicians, but those exceptions and safe harbors require, among other things, that the compensation paid pursuant to the arrangement is "set in advance" and "does not exceed fair market value" for the services the physician personally performs.

In NYPHV's case, a joint investigation between the U.S. Attorney's Office for the Southern District of New York and the Office of the New York State Attorney General's Medicaid Fraud Control Unit found that from January 2011 through December 2019, NYPHV and Hudson Valley Hospital Center paid an oncology practice more than $4

million for medical director and administrative services that were either not performed or not substantiated by appropriate documentation, which the government alleged resulted in violations of both the Stark Law and Anti-Kickback Statute.

The investigation involved three separate physician agreements and revealed several deficiencies. According to the government, for two of the agreements, the payments to the physicians were "prospective." The physicians were engaged to provide medical director services for a practice that did not yet exist and ultimately would never materialize. Both agreements were for five-year terms and required NYPHV to pay $185,000 annually to the oncology practice. Under the agreements, the physicians were obligated to keep records of their services and submit monthly reports to the hospital, but in both cases, NYPHV failed to produce any time records showing that services had actually been rendered. Additionally, even after the terms of the agreements expired, NYPHV continued to pay the oncology practice the fees set forth in the agreements for three additional years.

A third agreement involved a four-year intraoperative radiation therapy (IORT) management services agreement, under which the oncology practice was to provide certain management services. Under that agreement, NYPHV paid $125,000 annually to the oncology practice. Again, NYPHV failed to produce any documentation that the contracted services were actually performed by the oncology practice, and again, even after the term of the agreement expired, NYPHV continued to make payments to the practice.

KEY TAKEAWAYS

The NYPHV settlements highlight the heightened scrutiny surrounding physician services arrangements, particularly medical director agreements, and underscore the need for careful monitoring and documentation of arrangements with referring physicians to ensure compliance with applicable law, particularly the federal Stark Law and Anti-Kickback Statute. All medical director agreements between facilities and referring physicians must be properly structured and must provide payment only for services actually rendered. Compensation must be tied to documented physician services and must reflect fair market value without consideration of the volume or value of referrals. Facilities should ensure that physicians maintain and timely submit records or other appropriate documentation confirming completion of all contractual obligations, particularly with respect to a physician's administrative duties. Finally, healthcare providers should regularly monitor each of their medical director agreements and other physician services arrangements to ensure that all required documentation is maintained and that all other compliance measures instituted in each arrangement are followed throughout the term of the arrangement.

FOR MORE INFORMATION

If you have questions or want more information regarding the use of medical director or physician services agreements, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific needs. For more information, contact Alex W. Schulte at 913.253.2155 or aschulte@foulston.com or Keiteyana I. Parks at 316.291.9578 or kparks@foulston.com . For more information on the firm, please visit our website at www.foulston.com.

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