

CLIENT - ALERT



TO: Hospital Clients

RE: ***Compliance Update – Take a Fresh Look***

DATE: July 12, 2013

Recent Developments Indicate the Need for a Fresh Look at Your Compliance Program.

I. Infirmary Case

This week the Department of Justice intervened in a False Claims Act case against Infirmary Health System, Inc. and a number of its affiliates. The lawsuit was brought by a whistleblower who was a former member of the physician group he alleges received improper payments from Infirmary and its affiliates. The allegations include improper payments to the physicians for certain tests and procedures and includes alleged violations of Stark, the Anti-kickback Statute and the False Claims Act. In addition to compensation, office space, equipment and other items provided at less than fair market value, the physician alleges “outright falsification of medical records” to support medical necessity for nuclear stress tests and other procedures. The complaint alleges more than \$500 million dollars of improper billing to federal health programs including Medicare, Medicaid and Tricare.

II. STARK Settlements

CMS settled six new matters under the Self-Referral Disclosure Protocol (SRDP). Four of the six settlements involved hospitals in Florida, Tennessee and Alabama. Although the potential repayment amounts for the Stark violations disclosed in the SRDP settlements were not disclosed, the actual settlement amounts ranged from \$12,724 to \$187,340. Issues resolved included: arrangements with multiple physicians for emergency cardiology call-coverage that did not satisfy the requirements of any applicable exception (\$109,000); arrangements with (i) a group practice to provide residency program services, (ii) a physician to provide electronic health records subject matter expert services, (iii) a physician to provide medical director services, and (iv) a physician to provide leadership services for a hospital committee, which did not satisfy the requirements of any applicable exception (\$76,000); arrangement with a physician group practice for the rental of office space that did not satisfy the requirements of any applicable exception (\$187,340); arrangement with one physician for the provision of emergency room call coverage services at the Hospital’s adjacent walk-in clinics which failed to satisfy the requirements of any applicable exception (\$12,724); arrangement with one physician for the supervision of cardiac stress tests which failed to satisfy the requirements of the any applicable exception (\$72,270); and arrangements for medical director services with certain physicians and a physician practice that did not satisfy the requirements of any applicable exception (\$24,740).

Both the qui tam whistleblower case against Infirmity and the recent Stark SRDP settlements indicate that compliance matters (Stark and Anti-kickback in particular) are a primary focus of the various governmental agencies charged with enforcement of these matters. They also indicate that the southeast and Alabama in particular are within the cross-hairs – no longer can providers assume they will not be subject to scrutiny because they are in the rural South. As a result, we are recommending that all our healthcare clients take a fresh look at their compliance program and where necessary conduct an internal review (under direction of counsel) of any areas or practices of possible concern. The magnitude of the claims made in the Infirmity case, the cost to defend them (even if Infirmity is ultimately successful in defending its actions), and the enormous disruption to operations and reputation far exceed the expense and disruption of an internal review, correction of any non-compliance and, if necessary, a self disclosure of discovered non-compliance under the SRDP (assuming no fraud or bad intent).

Take a fresh look at your Compliance Program and make sure you are actively seeking out compliance lapses and correcting them.

PLEASE BE ADVISED: This Client-Alert is intended only to provide an overview of the matters addressed herein and does not constitute legal advice. If you have questions regarding a specific arrangement, please seek appropriate legal counsel.

Authors and Contributors:

[John W. Weiss, Esq.](#)

[Gregg Everett, Esq.](#)