

## *Iowa's Covenant Medical Center Settles False Claims Act Suit with DOJ*

In a new display of the government's recent crackdown against physician compensation arrangements that do not satisfy fair market value and commercial reasonableness thresholds, an Iowa hospital has settled with the Department of Justice (DOJ) for \$4.5 million in response to alleged violations of the Stark Law and the False Claims Act.<sup>1</sup> In a press release, the DOJ stated that Covenant Medical Center in Waterloo, Iowa, submitted claims for reimbursement to Medicare for services that violated the Stark Law.<sup>2</sup> The violations stemmed from compensation that Covenant paid to five of physicians employed by the hospital who referred patients to it.<sup>3</sup>

The DOJ alleged that the Covenant physicians—specifically, two orthopedic surgeons, two neurosurgeons, and a gastroenterologist—were reportedly among the highest-paid physicians in the entire U.S.,<sup>4</sup> making as much as \$2.1 million, despite Covenant's non-profit status.<sup>5</sup> These salaries were three times greater than the compensation being paid to other physicians who referred patients to Covenant, according to the CEO of Cedar Valley Medical Specialists, a competing independent physician group in Waterloo, IA who brought the issue to the attention of the DOJ.<sup>6</sup>

While the DOJ would not comment on *how* it determined Fair Market Value (FMV), the significant discrepancies between the compensation of the five Covenant physicians and other physicians in the region and around the country led the US Attorney's Office for the Northern District of Iowa to conclude that the hospital was paying the physicians for referrals, in violation of the Stark Law.<sup>7</sup> Violations of the Stark Law, a civil statute, are frequently prosecuted under the False Claims Act, whereby the government can prosecute anyone who knowingly submits a false claim for reimbursement to the government and potentially obtain damages equaling triple the amount of the false claim.<sup>8</sup>

While Covenant denies any wrongdoing, citing the settlement as a business decision "*to avoid the uncertainty of litigation,*"<sup>9</sup> the hospital did reveal that the physicians were specialists who had been working in understaffed areas.<sup>10</sup> As explained in the Winter 2008 issue of *Health Capital Topics*, if a specialized physician is receiving compensation within the higher range of FMV to perform duties that a less skilled practitioner could perform for less compensation, the arrangement may not be deemed to be *commercially reasonable* despite the fact that it is within the range of FMV for that specialist.

Under the physician employment exception to the Stark Law, a hospital may receive referrals from physicians who it employs (and bill Medicare for those services) as long as the compensation paid to the employee physicians is both at Fair Market Value and commercially reasonable.<sup>11</sup> The U.S. Department of Health and Human Services has interpreted "*commercially reasonable*" to mean an arrangement which appears to be "*a sensible, prudent business agreement, from the perspective of the particular parties involved, even in the absence of any potential referrals.*"<sup>12</sup>

The Covenant settlement clearly reflects the government's readiness to seek remuneration related to physician compensation arrangements that do not meet Fair Market Value and commercial reasonableness thresholds. As U.S. Attorney Matt Dummermuth confirmed, "*We are actively working with our investigative partners to ensure Medicare funds are properly spent, and we will continue to aggressively pursue all types of fraud in order to protect federal health care dollars.*"<sup>13</sup>

<sup>1</sup> Source: "Covenant Medical Center to Pay U.S. \$4.5 Million to Resolve False Claims Act Allegations," Press Release, United States Department of Justice, August 25, 2009,

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<http://www.usdoj.gov/opa/pr/2009/August/09-civ-849.html> (Accessed 9/11/09).

<sup>2</sup> Source: "Covenant Medical Center to Pay U.S. \$4.5 Million to Resolve False Claims Act Allegations," Press Release, United States Department of Justice, August 25, 2009,

<http://www.usdoj.gov/opa/pr/2009/August/09-civ-849.html> (Accessed 9/11/09).

<sup>3</sup> Source: "Covenant Medical Center to Pay U.S. \$4.5 Million to Resolve False Claims Act Allegations," Press Release, United States Department of Justice, August 25, 2009,

<http://www.usdoj.gov/opa/pr/2009/August/09-civ-849.html> (Accessed 9/11/09).

<sup>4</sup> Source: "Covenant Medical Center to Pay U.S. \$4.5 Million to Resolve False Claims Act Allegations," Press Release, United States Department of Justice, August 25, 2009,

<http://www.usdoj.gov/opa/pr/2009/August/09-civ-849.html> (Accessed 9/11/09).

<sup>5</sup> Source: "Covenant to pay feds \$4.5M to settle fraud allegations," by Courier Staff, Waterloo Cedar Falls Courier, August 25, 2009, [http://www.wfcourier.com/articles/2009/08/25/news/breaking\\_news/doc4a94156271f78380125347.txt](http://www.wfcourier.com/articles/2009/08/25/news/breaking_news/doc4a94156271f78380125347.txt) (Accessed 9/11/09).

<sup>6</sup> Source: "Reflections on the Covenant Settlement," By Martie Ross, House Calls: The Lathrop & Gage, Health Law Blog, August 31, 2009, <http://www.lathrophealthlawyers.com/2009/08/articles/fraud-and-abuse/reflections-on-the-covenant-settlement/> (Accessed 9/11/09).

<sup>7</sup> Source: "Iowa Hospital Pays \$4.5 Million in Fraud Case," By Nigel Duara, Associated Press, August 25, 2009 (Accessed 9/11/09).

<sup>8</sup> Source: "False Claim Act" 31 U.S.C. 3729-3733.

<sup>9</sup> Source: "Iowa Hospital Pays \$4.5 Million in Fraud Case," By Nigel Duara, Chicago Tribune, August 25, 2009,

<http://www.chicagotribune.com/news/chi-ap-ia-iowahospital-frau,0,7910766,print.story> (Accessed 9/11/09).

<sup>10</sup> Source: "Covenant to pay feds \$4.5M to settle fraud allegations," by Courier Staff, Waterloo Cedar Falls Courier, August 25, 2009,

<sup>11</sup> Source: 63 Fed. Reg. 1700-1703 (Jan. 9, 1998).

<sup>12</sup> Source: 63 Fed. Reg. 1700 (Jan. 9, 1998).

<sup>13</sup> Source: "Covenant Medical Center to Pay U.S. \$4.5 Million to Resolve False Claims Act Allegations," Press Release, United States Department of Justice, August 25, 2009,

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