

Community Health Systems Settles with OIG for \$262 Million

On September 25, 2018, the *U.S. Department of Justice* (DOJ) announced a \$262 million settlement with *Health Management Associates, LLC* (HMA), over fraud and abuse allegations.¹ The former U.S. hospital chain (which is now owned by *Community Health Systems* [CHS]) agreed to the settlement, and to transmit payment in October 2018.² The settlement resolves criminal and civil claims (which civil claims arose from eight separate whistleblower suits) that “*HMA knowingly billed government health care programs for inpatient services that should have been billed as outpatient or observation services, paid remuneration to physicians in return for patient referrals, and submitted inflated claims for emergency department facility fees.*”³

Specifically, HMA pled guilty to criminal charges that, from 2008 to 2012, it was “*pressuring and inducing*” physicians to increase hospital admissions through the *emergency department* (ED), whether or not those admissions were medically necessary, so that HMA could then bill for inpatient hospital care, rather than observation/outpatient care (for which the hospital is reimbursed less than if the patient is admitted).⁴ In addition to a financial penalty of \$35 million, HMA entered into a three-year *non-prosecution agreement* (NPA)⁵ and extended a *corporate integrity agreement* (CIA) to which the CHS and the *Office of Inspector General* (OIG) of the *U.S. Department of Health and Human Services* (HHS) were already party.⁶ As part of the settlement, Pennsylvania-based Carlisle HMA, LLC (formerly d/b/a Carlisle Regional Medical Center), an HMA subsidiary, also pled guilty to one count of conspiracy to commit healthcare fraud; under the aforementioned ED admission scheme, HMA “*set mandatory company-wide admission rate benchmarks for patients presenting to HMA hospital [EDs]— a range of 15 to 20 percent for all patients presenting to the [ED], depending on the HMA hospital, and 50 percent for patients 65 and older (i.e. Medicare beneficiaries).*”⁷ In addition to the criminal charges stemming from these allegations, HMA also settled civil claims (arising from these same facts) with the DOJ for \$62.5 million.⁸

HMA settled four additional civil claims – some claims were alleged of HMA as a whole, and the rest were alleged of a number of its subsidiary hospitals, as follows:

- (1) From 2003 to 2011, two HMA hospitals in Florida, Charlotte Regional Medical Center & Peace River Medical Center, allegedly induced patient referrals from: (a) a physician group, through the provision of free office space and staff, as well as by giving money to the group for overhead and administrative costs; and, (b) a surgeon, through free rent and leasehold improvements (for which HMA and the DOJ settled for \$93.5 million);⁹
- (2) From 2005 to 2007, an HMA subsidiary in Mississippi, Crossgates Hospital, allegedly leased office space to a physician, but only required him to pay for half of the rented space, in return for the physician’s referrals (for which HMA and the DOJ settled for \$425,000);¹⁰
- (3) From 2009 to 2012, two HMA hospitals in Pennsylvania, Lancaster Regional Medical Center and Heart of Lancaster Medical Center, allegedly paid excessive amounts of money to: (a) a physician group, “*in return for two businesses owned by the group and for services allegedly performed by the group*”; and, (b) a surgeon (for which HMA and the DOJ settled for \$55 million);¹¹ and,
- (4) From 2009 to 2011, “*certain HMA hospitals*” allegedly sought Medicare and Medicaid reimbursement for “*falsely inflated*” ED facility charges (for which HMA and the DOJ settled for \$12 million).¹²

As noted by the government in the settlement announcement, HMA was bought out by CHS in 2014, after the alleged incidents.¹³ However, CHS will still bear the brunt of the settlement arising from these alleged illegal activities. Among these consequences is CHS’s potential “*cash crisis,*” as a result of paying the \$262 million settlement amount. Credit rating company Moody’s advised that this settlement will “*severely weaken*” CHS and “*has already constrained [its] liquidity.*”¹⁴ Although CHS’s stock price stayed steady, and even increased slightly, after the announcement, prices subsequently dropped (perhaps due to unrelated issues such as Hurricane Michael¹⁵ or the October Wall Street “*rout*”¹⁶), from \$3.41 as of the close of September 25, 2018 (the date of the announcement) to \$2.64 as of the close of October 10, 2018.¹⁷ Whether this massive settlement will create more long-term problems for CHS remains to be seen.

- 1 “Hospital Chain Will Pay Over \$260 Million to Resolve False Billing and Kickback Allegations; One Subsidiary Agrees to Plead Guilty” U.S. Department of Justice, Press Release, September 25, 2018, <https://www.justice.gov/opa/pr/hospital-chain-will-pay-over-260-million-resolve-false-billing-and-kickback-allegations-one> (Accessed 10/15/18); “Press Room & Media Releases” Community Health Systems, September 25, 2018, <http://www.chs.net/investor-relations/press-room-media-releases/> (Accessed 10/15/18).
- 2 *Ibid.*
- 3 U.S. DOJ, September 25, 2018; “Former Hospital Chain HMA to Pay \$260 Million to Resolve Wide-Ranging Fraud Allegations” American Health Lawyers Association, September 28, 2018, <https://www.healthlawyers.org/News/Health%20Lawyers%20Weekly/Pages/2018/September%202018/September%2028%202018/Former-Hospital-Chain-HMA-to-Pay-260-Million-to-Resolve-Wide-Ranging-Fraud-Allegations.aspx> (Accessed 10/15/18).
- 4 U.S. DOJ, September 25, 2018.
- 5 As CHS’s press release on the settlement noted, the NPA means that “the government agreed not to bring criminal charges against HMA, as long as HMA and the Company abide by the provisions of the global settlement.” “Press Room & Media Releases” Community Health Systems, September 25, 2018, <http://www.chs.net/investor-relations/press-room-media-releases/> (Accessed 10/15/18).
- 6 U.S. DOJ, September 25, 2018.
- 7 The information was filed against Carlisle HMA, LLC on September 25, 2018, the same day that the settlement was announced, and the settlement agreement is pending the court’s acceptance. “Hospital Chain Will Pay Over \$260 Million to Resolve False Billing and Kickback Allegations; One Subsidiary Agrees to Plead Guilty” U.S. Department of Justice, Press Release, September 25, 2018, <https://www.justice.gov/opa/pr/hospital-chain-will-pay-over-260-million-resolve-false-billing-and-kickback-allegations-one> (Accessed 10/15/18).
- 8 U.S. DOJ, September 25, 2018.
- 9 *Ibid.*
- 10 *Ibid.*
- 11 *Ibid.*
- 12 *Ibid.*; Community Health Systems unit settles false-billing case for \$262M” By Alex Kacik, Modern Healthcare, September 25, 2018, <http://www.modernhealthcare.com/article/20180925/NEWS/180929922> (Accessed 10/15/18).
- 13 U.S. DOJ, September 25, 2018; Kacik, September 25, 2018.
- 14 “Major hospital chain faces cash crisis after DOJ criminal settlement” By Berkeley Lovelace Jr., CNBC, September 26, 2018, <https://www.cnbc.com/2018/09/26/major-hospital-chain-faces-cash-crisis-after-doj-criminal-settlement.html> (Accessed 10/15/18).
- 15 “Three hospitals, with a combined stock market value of \$60 billion, brace for Hurricane Michael’s fury” By Berkeley Lovelace Jr., CNBC, October 10, 2018, <https://www.cnbc.com/2018/10/10/investor-owned-hospitals-brace-forhurricane-michaels-fury.html> (Accessed 10/15/18).
- 16 “Stocks fall, led by tech, as Wall Street fails to bounce back from last week’s rout” By Fred Imbert, CNBC, October 15, 2018, <https://www.cnbc.com/2018/10/15/us-futures-point-to-a-triple-digit-fall-amid-saudi-arabia-tensions.html> (Accessed 10/15/18).
- 17 “Community Health Systems Inc (CYH:NYSE)” CNBC Markets, <https://www.cnbc.com/quotes/?symbol=CYH> (Accessed 10/15/18).



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