



## DOJ Sues Steward for Violating Fraud & Abuse Laws

On December 18, 2023, the Department of Justice (DOJ) filed a complaint against Steward Health Care System, Steward Medical Group (SMG), and St. Elizabeth's Medical Center (SEMC), alleging violations of the physician self-referral law (commonly known as the "Stark Law") and the False Claims Act.<sup>1</sup> Steward, an integrated healthcare system, is one of the largest private, for-profit healthcare networks in the U.S., and the owner of SMG and SEMC.<sup>2</sup> This Health Capital Topics article reviews the government's allegations.

The Stark Law prohibits physicians from referring Medicare patients to entities with which the physicians or their family members have a financial relationship for the provision of designated health services (DHS).<sup>3</sup> Further, when a prohibited referral occurs, entities may not bill for services resulting from the prohibited referral.<sup>4</sup> Under the Stark Law, DHS include, but are not limited to, the following:

- (1) Inpatient and outpatient hospital services;
- (2) Radiology and certain other imaging services;
- (3) Radiation therapy services and supplies;
- (4) Certain therapy services, such as physical therapy;
- (5) Durable medical equipment; and,
- (6) Outpatient prescription drugs.<sup>5</sup>

Civil penalties under the Stark Law include overpayment or refund obligations, a potential civil monetary penalty of \$15,000 for each service, or up to \$100,000 per arrangement or scheme, and exclusion from Medicare and Medicaid programs.<sup>6</sup> Further, violation of the Stark Law can trigger a violation of the False Claims Act (FCA).<sup>7</sup> The FCA prohibits any person from knowingly submitting, or causing to submit, false claims to the government.<sup>8</sup> FCA violators are liable for treble damages (i.e., "three times the government damages"), as well as for a penalty linked to inflation.<sup>9</sup> Not only does the FCA give the U.S. government the ability to pursue fraud, it also enables private citizens to file suit on behalf of the federal government through what is known as a "*qui tam*," "*whistleblower*," or "*relator*" suit.<sup>10</sup>

According to the complaint-in-intervention filed in the District of Massachusetts by the Department of Justice, SMG recruited Dr. Arvind Agnihotri, a cardiac surgeon, in 2012 to increase the number of cardiovascular surgeries, and consequently increase revenue, at SEMC.<sup>11</sup> Between January 2013 and March 2022, SMG allegedly paid Dr. Agnihotri total compensation in excess of Fair Market Value. The government noted that, during

most of the years of the relevant time period, Dr. Agnihotri's total compensation exceeded the 90<sup>th</sup> percentile for cardiovascular surgeons in the Eastern Region of the U.S. according to the Medical Group Management Association (MGMA) physician compensation benchmarks.<sup>12</sup> As a result, the defendants allegedly violated the Stark Law, and consequently the False Claims Act, by submitting over 1,000 claims to Medicare, supposedly knowing that the claims for the services were improperly referred and not eligible for any payment by the federal healthcare program.<sup>13</sup> The government alleges that, as a result of SEMC's false claims, Medicare mistakenly paid out tens of millions of dollars to SEMC.<sup>14</sup>

Dr. Agnihotri's aggregate compensation included an incentive compensation component that allegedly took into account the number and volume of referrals to SEMC;<sup>15</sup> this compensation was arguably the largest focus of the government's complaint. Specifically, Dr. Agnihotri's employment agreements during the 2013-2022 timeframe stated that his incentive compensation amount was based on the number of surgeries that were performed at SEMC – both by him personally and by the other surgeons in the Division of Cardiac Surgery.<sup>16</sup> Once the Division met the case threshold in a given year, SMG paid Dr. Agnihotri a lump sum incentive plus an additional amount of money for each case performed in an SEMC operating room above the threshold, up to a ceiling.<sup>17</sup> The employment agreements included tables cross walking the number of surgical cardiovascular cases performed in an SEMC operating room to the amount of incentive compensation to be received by Dr. Agnihotri.<sup>18</sup> In at least some of his employment agreements, the incentive compensation amount per surgical case increased as higher case thresholds were reached.<sup>19</sup> Notably, the government stated that neither Steward nor its wholly-owned subsidiaries (SMG or SEMC) "perform[ed] a fair market value analysis of the compensation arrangement or any of its amendments, prior to or at the time of execution of the employment agreements."<sup>20</sup> In total, Dr. Agnihotri was allegedly paid over \$4.8 million in incentive compensation during the relevant timeframe.<sup>21</sup>

Although the complaint was recently filed, the investigation into Steward began in 2018, after SEMC's former chief financial officer (CFO), Joseph Nocie, filed a *qui tam* action.<sup>22</sup> Nocie, who served as CFO from May

2016 to November 2017, knew that Dr. Agnihotri's incentive compensation took into account the volume of Dr. Agnihotri's referrals to SEMC and other business generated for SEMC, and had even raised his concerns related to physician compensation at budget meetings.<sup>23</sup>

Steward's spokesperson stated that "Steward looks forward to vindicating its positions in court and is confident it will ultimately obtain a favorable outcome."<sup>24</sup> Steward also stated that "the lawsuit does not allege that Steward submitted claims for any medical procedures that were unnecessary, not performed, or billed incorrectly. It does not allege that the physician's

employment contract influenced his clinical decision making. And it does not allege any harm to patient safety."<sup>25</sup>

Acting U.S. Attorney Joshua Levy stated that "the government's complaint...alleges that in its drive to increase cardiac surgeries at SEMC, the defendants entered into improper compensation arrangements with a cardiac surgeon, and knowingly submitted false claims to Medicare."<sup>26</sup> Levy also said that the DOJ was "committed to enforcing the Stark Law, and protecting patients and the Medicare program from financial relationships that can corrupt clinical decision making."<sup>27</sup>

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1 "United States Files Complaint Against St. Elizabeth's Medical Center, Steward Medical Group and Steward Health Care System" United States Attorney's Office, Department of Justice, December 18, 2023, <https://www.justice.gov/usao-ma/pr/united-states-files-complaint-against-st-elizabeths-medical-center-steward-medical-group> (Accessed 12/19/23), ¶ 1.

2 *Ibid.*, ¶¶ 1-3.

3 "CRS Report for Congress: Medicare: Physician Self-Referral ("Stark I and II")" By Jennifer O'Sullivan, Congressional Research Service, The Library of Congress, July 27, 2004, available at: <http://www.policyarchive.org/handle/10207/bitstreams/2137.pdf> (Accessed 12/8/23); "Limitation on certain physician referrals" 42 U.S.C. § 1395nn.

4 "Limitation on certain physician referrals" 42 U.S.C. § 1395nn(a)(1)(A).

5 "Limitation on Certain Physician Referrals" 42 U.S.C. § 1395nn(a)(1)(B); "Definitions" 42 C.F.R. § 411.351 (2015). Note the distinction in 42 C.F.R. § 411.351 regarding what services are included as DHS: "Except as otherwise noted in this subpart, the term 'designated health services' or DHS means only DHS payable, in whole or in part, by Medicare. DHS do not include services that are reimbursed by Medicare as part of a composite rate (for example, SNF Part A payments or ASC services identified at §416.164(a)), except to the extent that services listed in paragraphs (1)(i) through (1)(x) of this definition are themselves payable through a composite rate (for example, all services provided as home health services or inpatient and outpatient hospital services are DHS)."

6 "Limitation on certain physician referrals" 42 U.S.C. § 1395nn(g).

7 "Comparison of the Anti-Kickback Statute and Stark Law" Health Care Fraud Prevention and Enforcement Action Team (HEAT) Office of Inspector General (OIG), <https://oig.hhs.gov/documents/provider-compliance-training/939/StarkandAKSChartHandout508.pdf> (Accessed 12/8/23).

8 "The False Claims Act" U.S. Department of Justice, February 2, 2022, <https://www.justice.gov/civil/false-claims-act> (Accessed 1/30/23).

9 *Ibid.*

10 *Ibid.*

11 "United States Files Complaint Against St. Elizabeth's Medical Center, Steward Medical Group and Steward Health Care System" United States Attorney's Office, Department of Justice, December 18, 2023, <https://www.justice.gov/usao-ma/pr/united-states-files-complaint-against-st-elizabeths-medical-center-steward-medical-group> (Accessed 12/19/23), ¶ 58.

12 *Ibid.*, ¶¶ 99-102.

13 *Ibid.*, ¶¶ 4-8.

14 *Ibid.*, ¶ 9.

15 "Steward Health Paid Boston Cardiac Doc Kickbacks, Feds Say" By Cassie Chew, Law360, <https://www.law360.com/articles/1778465/steward-health-paid-boston-cardiac-doc-kickbacks-feds-say> (Accessed 12/19/23).

16 Department of Justice, December 18, 2023, ¶ 69.

17 *Ibid.*, ¶ 109.

18 United States Attorney's Office, Department of Justice, December 18, 2023, ¶ 73.

19 *Ibid.*

20 *Ibid.*, ¶ 82.

21 *Ibid.*, ¶¶ 6, 106.

22 "United States Complaint-In-Intervention" United States District Court, District of Massachusetts, December 16, 2023, [https://www.justice.gov/d9/2023-12/usa\\_v\\_steward\\_health\\_-\\_complaint\\_in\\_intervention.pdf](https://www.justice.gov/d9/2023-12/usa_v_steward_health_-_complaint_in_intervention.pdf) (Accessed 12/19/23).

23 *Ibid.*, ¶ 152.

24 "Steward Health Paid Boston Cardiac Doc Kickbacks, Feds Say" By Cassie Chew, Law360, <https://www.law360.com/articles/1778465/steward-health-paid-boston-cardiac-doc-kickbacks-feds-say> (Accessed 12/19/23).

25 *Ibid.*

26 United States Attorney's Office, Department of Justice, December 18, 2023.

27 *Ibid.*



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