

PUBLICATION

Time to Revisit Your Physician Relationships

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On June 9, 2015, the Department of Health and Human Services, Office of Inspector General issued a new Fraud Alert entitled "Physician Compensation Arrangements May Result in Significant Liability" (Alert) in the wake of 12 False Claims Act settlements involving physician compensation and medical director contracts.

On its tail, on June 16, 2015, the Department of Justice announced the largest False Claims Act settlement against a nursing home, *United States ex rel. Beaujon v. Hebrew Homes Health Network, Inc., et al.*, Case No. 12-20951 CIV (S.D. Fla.). The suit was brought by a whistleblower, the former CFO of a Miami nursing home which paid a record \$17 million to settle a case alleging a kickback scheme. The nursing home allegedly contracted with multiple medical directors, paying them thousands of dollars per month for phantom, undocumented services in return for referrals. The nursing home entered into a Corporate Integrity Agreement and agreed to alter its physician contracting policies.

This is a wake-up call for the health care industry. Even if one purpose of an agreement is to pay for referrals, it may run afoul of the anti-kickback statute and could lead to criminal and civil action under the False Claims Act, civil monetary penalties and exclusion from the Medicare and Medicaid programs.

This was also reminiscent of yet another case prosecuted in 2013 where a contracted physician medical director of a hospice, Eugene Goldman, was sentenced to 51 months in prison and excluded from participation in any federal health care program for conspiring to violate the anti-kickback law. The allegations were that the medical director contract gave the false impression that services were being rendered when in fact the majority of payments were for referrals.

The lessons learned include:

- Continue to be vigilant in your compliance efforts.
- Scrutinize physician contracts.
- Require job descriptions and duties.
- Require documentation of services rendered.
- Do not duplicate services.
- Routinely police the fair market value of services.