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Compensation, Investment Interests Converge In Montana Hospital's \$21.2M FCA Settlement

By Nina Youngstrom

Allegations of excessive physician compensation and conflicts of interest have converged in a new hospital false claims settlement. Kalispell Regional Healthcare (KRH) and related entities in Montana agreed to pay \$21.2 million over compensation for 63 employed specialists that allegedly was out of whack for their workload, the Department of Justice (DOJ) said Sept. 28. KRH swallowed losses on the compensation because of its gains from the physicians' referrals to its hospitals, and in the process allegedly violated the Stark Law and Anti-Kickback Statute. KRH also settled allegations that HealthCenter Northwest, its joint-venture hospital, created an "improper investment arrangement for certain physicians," DOJ alleged. The Flathead Physicians Group, which owned part of the hospital, will pay \$2.8 million to settle the false claims allegations, according to KRH.

The settlement resolves two whistleblower lawsuits filed in May 2017 and April 2018 by Jon Mohatt, the former CFO of KRH's physician network. DOJ consolidated the cases, with the resolution coming fast for the false claims world. The defendants said they "disagree with the allegations." This is the second major Stark-related false claims settlement over physician compensation in two months. In August, William Beaumont Hospital in Detroit, Michigan, agreed to pay \$84.5 million to settle false claims allegations over sweetheart deals with eight referring physicians, including above-fair-market-value compensation and below-fair-market-value rent (RMC 8/20/18, p. 4).

It's crucial for hospitals to ensure physicians are being paid fair-market value and to focus on their work relative value units (wRVUs), which measure their professional productivity, rather than their technical referrals for the facility component, says Houston attorney Adam Robison, with King & Spalding. He's also leery of tracking referrals and discussing them in board minutes and emails, which can create "bad facts" for executives. But the connection between practice losses and physicians' referrals would be hard for prosecutors to establish if hospitals defend false claims allegations at trial, says former federal prosecutor Melissa Jampol, with Epstein Becker & Green in New York City. "It's more complicated than meets the eye," she says. However, compensation arrangements that would be fine outside health care could run afoul of fraud and abuse laws and require careful vetting for fair-market value and commercial reasonableness, the attorneys say.

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