

Report on Medicare Compliance Volume 30, Number 25. July 12, 2021 Ohio Health System Settles Whistleblower Case for \$21M; New Owner Also Self-Disclosed

By Nina Youngstrom

Akron General Health System (AGHS) in Ohio will pay \$21.25 million to settle false claims allegations that some physicians were paid very generously in exchange for patient referrals in a case involving both a whistleblower and a self-disclosure, the Department of Justice (DOJ) said July 2.^[1] Beverly Brouse, the former interim compliance officer and director of internal audit at AGHS, allegedly brought her concerns about physician compensation to board members and executives but was rebuffed. Eventually she was fired and filed a False Claims Act (FCA) lawsuit Dec. 30, 2015. Around the same time, AGHS was acquired by the Cleveland Clinic Foundation, which self-disclosed noncompliant physician compensation arrangements at AGHS to DOJ about four months later.

According to the settlement,^[2] DOJ alleged that between Aug. 1, 2010, and March 30, 2016, AGHS submitted claims to Medicare that violated the Anti-Kickback Statute (AKS) because it paid certain physicians compensation above fair market value to induce their referrals and violated the Stark Law because the compensation exceeded fair market value and/or took into account the volume or value of their referrals.

The FCA case was settled for single damages, which is unusually low for a false claims case, according to Warner Mendenhall, the whistleblower's attorney.

"This is a great example of the value of having an effective compliance program and a senior management team that walks the talk on doing the right thing," said Donald Sinko, chief integrity officer at Cleveland Clinic. "The noncompliance by Akron General was all prior to our acquisition, and our compliance program uncovered the problem right after we acquired them. As a result of our work, no actions were taken by the Justice Department against Cleveland Clinic." Sinko said Cleveland Clinic was unaware of the whistleblower complaint at the time of the self-disclosure.

Brouse worked in the AGHS compliance department for 10 years and in internal audit for two years. According to her complaint,^[3] AGHS "initiated an aggressive strategy to increase its control over health care delivery around its hospital location" partly by buying physician practices and/or employing physicians to control their patient referrals. The employed physicians and physicians in personal service arrangements were paid excessive compensation "to ensure their substantial referral stream," the complaint alleged.

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