

## Report on Medicare Compliance Volume 31, Number 15. April 25, 2022

### Providence Settles FCA Allegations of Unnecessary Neurosurgery

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In a case that links productivity compensation to allegedly medically unnecessary neurosurgery, Providence Health & Services in Washington agreed to pay \$22.69 million to settle false claims allegations, the U.S. Attorney's Office for the Eastern District of Washington and the state attorney general said April 12.<sup>[1]</sup> The settlement focused on alleged false claims submitted to Medicare, Medicaid and other federal health care programs for neurosurgery performed by two neurosurgeons at Providence St. Mary Medical Center (SMMC) in Walla Walla.<sup>[2]</sup> Employees had raised concerns that the surgeons "endangered the safety of SMMC patients" and didn't adequately or correctly document certain procedures, diagnoses and complications. Both surgeons were allowed to resign.

The case was set in motion by neurosurgeon David Yam, former medical director of neurosurgery at SMMC. He alleged that he flagged concerns about the neurosurgeries but was put off. When Providence eventually did an investigation, it was "flawed," Yam alleged, "revealing no evidence of false billing," according to his whistleblower complaint.<sup>[3]</sup>

The settlement explains that Providence, through SMMC, billed Medicare, Medicaid, TRICARE, VA Community Care, the Federal Employee Health Benefits Program and other federal health care programs for neurosurgery and other services. SMMC employed the two neurosurgeons, who are identified as Dr. A and Dr. B.

Between July 1, 2013, and Nov. 13, 2018, SMMC's neurosurgery department did a high volume of multilevel spinal surgeries, according to the settlement. SMMC staff neurosurgeons, including Dr. A, were compensated for their productivity based on work relative value units (RVUs) for services they personally performed. They were paid for every work RVU they generated, with no cap on their work RVU-based compensation, the settlement stated. "In this manner, the greater the number of procedures of higher complexity that the neurosurgeon performed, the greater the compensation the neurosurgeon received." Between 2014 and 2018, Dr. A's productivity exceeded the 90th percentile of physician market survey data, and he earned between \$2.5 million and \$2.9 million a year from 2014 to 2017.

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