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Health System Settles FCA Allegations Over Leases, Payments for Services Not Performed

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A false claims case that began in 2018 with allegations that a private equity-owned health system used its accountable care organizations (ACOs) to make money at the expense of patient care has ended, instead, in a settlement about payments to physicians for services that weren't performed and discounted rent.

Steward Health Care System LLC and several related entities agreed to pay \$4.735 million to settle False Claims Act (FCA) allegations based on violations of the Stark Law and Anti-Kickback Statute (AKS), the U.S. Attorney's Office for the District of Massachusetts said June 10.^[1] The lawsuit was set in motion by three whistleblowers, but their ACO allegations were dropped by the government, and the private equity company, Cerberus Capital Management L.P., no longer owns Steward, according to Jeanne Markey, one of the attorneys for the whistleblowers.

The case is a reminder that physician contracts must spell out in writing the specific services provided or they may run afoul of the Stark Law or AKS, said attorney Bob Wade, with Barnes & Thornburg in South Bend, Indiana. Hospitals "can't just assume the physician is providing services equivalent to the compensation and say you have a compliant arrangement," he said. "Sit down with physicians and say exactly what the physician's services are going to be."

According to the settlement,^[2] DOJ and the Commonwealth of Massachusetts took no position on the allegations in the whistleblowers' complaint. But Steward "admits, acknowledges, and accepts its responsibility" for certain facts set forth in the settlement.

For starters, in March 2019 Steward, which describes itself as "the country's largest physician-led, tax paying, integrated health care system," including multiple hospitals in Massachusetts, self-disclosed that it neglected to charge the appropriate rent to some physicians and non-physician organizations and therefore may have violated the AKS or Stark Law. "Between January 1, 2010, and October 1, 2015, Steward leased real property to physicians and physician organizations that were referral sources for Steward's Massachusetts hospitals and also leased real property to non-physician organizations that were not referral sources," the settlement states. Steward didn't collect about \$1.4 million in rent from Jan. 1, 2010, through October 1, 2015, from about 50 physicians/practices named in an attachment to the settlement, which means some of them paid below-market rent.

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