



**PHYSICIAN COMPENSATION: COVENANT
HOSPITAL SETTLEMENT**

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Covenant Medical Center, located in Waterloo, Iowa recently entered into a settlement agreement with the United States Department of Justice (the “DOJ”) pursuant to which the hospital paid \$4,500,000 to resolve allegations by the DOJ that the hospital paid compensation to certain physicians that exceeded fair market value and was not commercially reasonable. The DOJ further alleged that, because the physicians’ compensation exceeded fair market value and was not commercially reasonable, the compensation arrangements between the Hospital and the physicians did not satisfy the Stark Law exception for bona fide employment arrangements, such that (i) Medicare was precluded from paying any claims for reimbursement made the hospital with respect to any designated health services (as defined under the Stark Law) referred by the physicians; and (ii) the hospital was potentially subject to civil monetary penalties and other sanctions. Moreover, the DOJ alleged that, because any claims submitted to Medicare by the hospital for such services violated the Stark Law, each such claim constituted a false claim, thereby potentially subjecting the hospital to treble damages and further penalties under the False Claims Act.

The Covenant investigation and settlement should serve as a reminder to hospitals that merely employing a physician does not guaranty protection under the Stark Law. Even if the remaining requirements of the employment exception are satisfied, the amount of compensation paid to the employed physician must reflect fair market value for the physician’s services and must be commercially reasonable. Whenever a hospital seeks to employ a physician, particularly in a highly compensated specialty, the hospital should consider obtaining an independent, fair market value analysis.

If your hospital is considering employing a physician, or if you have questions or concerns regarding whether an existing physician compensation arrangement reflects fair market value and/or is commercially reasonable, we recommend you contact legal counsel to review any agreements and other documentation of the arrangement and, if necessary, to coordinate obtaining an independent, fair market analysis to substantiate the physician’s compensation.

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