

Recent Settlements Suggest Need for Greater Caution Around Physician Deals

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A parade of headlines announcing record-breaking settlements (chart below) has left healthcare executives, lawyers, consultants, and even physicians wondering if they could be exposed to regulatory or legal action as a result of any of their employment or other physician-hospital alignment arrangements.

The government's [incredible return on investment on enforcement actions](#), as well as a [provision in last month's budget deal that could potentially lead to even greater penalties](#), and the prospect of large payouts to

whistleblowers combine to ensure that allegations will continue to be made.

Further complicating things, the government has begun to cast its net wider.

FAIR MARKET VALUE IS NOT ENOUGH

Ensuring that physician compensation is consistent with fair market value has long been a top priority for healthcare providers, as it should be given that it has been the primary focus of regulators.

Recently, though, the government has increased its focus on the "commercial reasonableness" of physician-hospital arrangements. The commercial reasonableness test boils down to this: "Does this arrangement make business sense in the absence of any potential referrals?" Even where payment levels are consistent with fair market value, it is essential to also be able to say yes to the commercial reasonableness test.



**Selected Federal Stark Law and
False Claims Act Settlements in 2015**

Hospital/Health System	Allegations¹	Settlement Amount	Whistleblower Details
Adventist Health System	Excessive physician compensation for referrals in FL, NC, TN, and TX (settled September 2015)	\$115M	Risk manager, Executive Director of Physician Services, Compliance Officer – whistleblowers' share of settlement not yet determined
Tuomey Healthcare System	Employment of physicians to prevent potential lost revenue from referrals to other less costly facilities (settled October 2015)	\$72.4M	Orthopedic surgeon – will receive \$18.1M
North Broward Hospital District	Overpayment of hospital-employed physicians (settled September 2015)	\$69.5M	Orthopedic surgeon – will receive \$12M
Citizens Medical Center	Excessive compensation to cardiologists and improper referral bonuses paid to emergency room physicians (settled April 2015)	\$21.8M	Three cardiologists – will collectively receive \$6M
Westchester Medical Center	Funding of independent cardiology practice for the purpose of generating referrals (settled May 2015)	\$18.8M	Compliance Officer
Plaza Health Network	Medical director “ghost positions” (settled June 2015)	\$17M	Former CFO – will receive \$4.25 million
Mercy Health (Missouri)	Portion of physician bonuses based on value of referrals (settled August 2015)	\$5.5M	Employed physician – will receive \$825,000

A BIT OF GOOD NEWS

Physicians are beginning to understand the implications of excessive compensation and the fact that they too are at risk. An OIG Fraud Alert published in June warned physicians of the significant liability that may result from excessive compensation arrangements, highlighting a recent settlement with twelve physicians who entered into questionable medical directorship and office staff arrangements. The physicians, an integral part of the arrangement, were subject to liability under the Civil Monetary Penalties Law.

Educating physicians about these concerns may help health systems in compensation negotiations. The more physicians understand the risks, the more they should be willing to [dial down the deal heat](#) and agree to reasonable compensation terms.

WHAT NOW?

Despite the new challenges, it is still possible to structure arrangements with physicians where compensation meets both fair market value and commercial reasonableness tests, by appropriately engaging the support of legal and valuation professionals *with strong expertise and experience in these specific areas*. Those experts can identify areas for further review, help structure arrangements to mitigate regulatory exposure, and advise you when to reconsider or walk away from a troublesome deal.

[Learn more about how Veralon can help make sure your physician compensation arrangements comply with laws and regulations.](#) ●

¹ Details of each case are available through the Department of Justice website (<http://www.justice.gov/justice-news?topic=3936>) and many other sources available on the internet.