

To: Hospitals and Health Systems and Fraud and Abuse
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July 2012 SRDP Settlement

By John Garver, III, and Jennifer Hutchens*

On June 28, the Centers for Medicare & Medicaid Services (CMS) announced its tenth disclosure under the Voluntary Self-Referral Disclosure Protocol (SRDP). This settlement involved violations of the federal physician self-referral statute (commonly known as the Stark Law) by a Maine hospital (Hospital). The Hospital disclosed under the SRDP that certain of its arrangements with a physician and a physician group practice had lapsed and may have violated the Stark Law because those arrangements did not satisfy the requirements of the personal services exception under the Stark Law. The Hospital's violations were settled for \$59,000. CMS Quarterly provides a [list](#) of "select" self-disclosures resolved under the SRDP, including this settlement.

From a provider's perspective, a primary benefit of the SRDP is that CMS has the authority to reduce the amount due and owing to the government for violations of the Stark Law. The first announced SRDP settlement of \$579,000 (Saints Medical Center (Saints) in Lowell, MA) is the largest SRDP settlement to date. The reported Saints settlement amount was substantially less than the calculated overpayment, which was estimated by media reports to be anywhere between \$785,000 and \$14.5 million. Saints disclosed under the SRDP that it violated the Stark Law by: (1) failing to satisfy the requirements of the personal services exception for arrangements with certain hospital department chiefs and the medical staff for leadership services; and (2) failing to satisfy the requirements of the personal services exception for arrangements with certain physician groups for on-site overnight coverage for Saints patients.

The remaining nine settlements were in the range of \$60 to \$130,000. Three of those nine settlements were related to failure to comply with the personal services exception under the Stark Law; another three settlements were related to exceeding the calendar year limit under the non-monetary compensation exception under the Stark Law; and the other three settlements were related to violations of other Stark Law exceptions (i.e., the in-office ancillary services exception; the bona fide employment exception; and the rental of equipment exception). Eight of the disclosing entities have been hospitals (including two critical access care hospitals), and two of the disclosing entities have been physician group practices.

**We would like to thank John B. Garver, III, Esquire, and Jennifer C. Hutchens, Esquire (Robinson Bradshaw and Hinson PA, Charlotte, NC), for providing this email alert. We would also like to thank the Hospitals and Health Systems Practice Group leadership for sharing this alert with the Fraud and Abuse Practice Group.*

Member benefit educational opportunity:
Participate in the [webinar](#) that will help you interpret the HIPAA audit protocol for health lawyers (August 21).

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