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Court Rules that Hospital's Incentive Payments for its Oncologists Violated the Stark Law

On November 13, 2013, a federal district court ruled that Halifax Hospital, a community hospital in Volusia County, Florida, violated the federal Stark Law as a result of the incentive compensation payments it made to six of its employed oncologists. The case was originally filed in 2009 by Halifax's former compliance officer as a Qui Tam or "whistleblower" lawsuit. However, in 2011, the U.S. Government joined and took over the case against Halifax.

Background: In 2005, Halifax entered into employment contracts (the "Contracts") with six oncologists (the "Oncologists"). In addition to their base salaries, the Contracts provided that the Oncologists would be eligible to receive incentive compensation. The incentive compensation would be drawn from an incentive compensation pool constituting 15% of the operating margin (i.e. revenue minus expenses) from Halifax's medical oncology program ("15% Pool"). The operating margin included, among other things, fees for designated health services ("DHS") that were not personally performed by the Oncologists, such as fees for outpatient prescription drugs (e.g. chemotherapy) and other outpatient services. The incentive compensation was determined by dividing the 15% Pool among six Oncologists based on each individual Oncologist's personally performed services or productivity. Thus, if one Oncologist worked more than another, the more productive Oncologist would receive a larger percentage of the 15% Pool.

As a result of the compensation paid to the Oncologists, and DHS referrals, the Court ruled that the Stark Law applied to the compensation arrangement. The Court also concluded that because the Stark Law applied to the compensation arrangement, that Halifax had the burden of showing that the compensation arrangement fell within one of the Stark Law's applicable exceptions. Halifax claimed that the compensation arrangement fell within the Stark Law's employment exception and thus, had to prove that the incentive compensation paid to the Oncologists was not structured or determined in a manner that took into account (directly or indirectly) the volume or value of any referrals by the Oncologists.

Ruling: The Court ruled that the Oncologists' incentive compensation failed to comply with the employment exception because it did take into account the volume or value of referrals. More specifically, because "revenue from referrals made by the medical oncologists would flow into the incentive bonus pool, and additional referrals would be expected to increase the size of the pool," the Oncologists would receive revenue for services that they did not personally perform. While Halifax argued that the bonus pool was, in fact, divided among the Oncologists based upon each Oncologist's personally performed services, the Court



found that the 15% Pool that the Oncologists would draw from was not based solely on services personally performed by the oncologists but also included revenue from referrals made by Oncologists for DHS that were not personally performed by the Oncologists. Thus, the Court ruled that because the compensation arrangement did not satisfy the Stark Law's employment exception, the Oncologists were prohibited from making referrals to Halifax for DHS, and therefore were prohibited from submitting Medicare claims for services furnished pursuant to such referrals. While the Court has not addressed the issue of damages yet, many expect that Halifax Hospital will be asked to repay or receive a penalty of at least 100 million dollars. This issue, along with whether Halifax will be subject to False Claims Act liability, will be decided by a jury in a trial scheduled for March 2014.

While the Halifax decision was issued by a federal district court and may be further appealed, the Court's ruling and U.S. Government's arguments in the case are informative and yet another sign that the Stark Law represents a significant risk for providers.

A copy of the Court's order can be found [here](#).

Should you have any questions about this alert or compliance with the Stark Law in general, please contact any member of Shipman & Goodwin's [Health Law Practice Group](#).

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