

# UPDATES FROM BARATZ & ASSOCIATES, P. A. FOR THE HEALTHCARE INDUSTRY

October 2009  
Issue 12

## MORE CARDIOLOGISTS SETTLE WITH GOVERNMENT OVER KICKBACK ALLEGATIONS RELATED TO UMDNJ CARDIOLOGY PROGRAM

On September 17, 2009 the U.S. Attorney's Office, District of New Jersey, issued a press release outlining a settlement reached with three more cardiologists in the University of Medicine and Dentistry of New Jersey (UMDNJ) cardiology program.

The press release states, "The U.S. Attorney's Office has entered into settlements totaling approximately \$960,000 with three cardiologists to settle allegations they accepted kickbacks in the form of salaries from the UMDNJ, and caused the submission of false claims to Medicare."

The settlements signed by Dr. Ravindra Patel of Scotch Plains, NJ (\$300,000), Dr. Jasjit Walia of Edison, NJ (\$300,000), and Dr. Rakesh Sahni of Rumson, NJ (\$360,000) represented double damages for salaries received by the cardiologists as kickbacks for making prohibited referrals to UMDNJ's University Hospital, according to the release.

The government alleged that beginning in 1995, the hospital was failing to meet certain procedure performance standards required to maintain funding and accreditation from the State of New Jersey related to cardiac procedures, including cardiac catheterizations and cardiothoracic surgery and "embarked" on a program to resolve this by employing certain part-time cardiologists who could potentially refer patients to the hospital. The government alleged that those employment arrangements served as "vehicles to pay kickbacks to the cardiologists for their referrals to the University Hospital."

This is just part of an ongoing investigation by the Department of Justice in cooperation with the Department of Health and Human Services, Office of Inspector General, and the FBI that has reached settlements with six other cardiologists who were alleged to have exploited the same program. In addition, two other cardiologists pleaded guilty to criminal embezzlement charges and the government has filed civil suits against two others. The investigation is still ongoing.

Acting U.S. Attorney Ralph J. Marra stated, "we will continue to pursue those physicians who abuse and defraud federal health care programs by making referrals based on financial considerations rather than the best interests of patients."

UMDNJ has been in the middle of a number of federal and state investigations over the last several years and just recently settled allegations related to a "double billing" claim initiated in a qui tam (whistleblower) complaint filed by Dr. Steven Simring in 2005. The complaint alleged that from 1993 to 2004, UMDNJ's University Hospital submitted claims to Medicaid for outpatient physician services that were also being billed by doctors working in the hospital's outpatient centers, effectively double billing the government's Medicaid program.

The settlement was for \$2 million and is an addition to \$4.9 million that the State of New Jersey recouped previously regarding a criminal complaint filed against UMDNJ by the U.S. Attorney's Office for the District of New Jersey which included a Deferred Prosecution Agreement. Dr. Simring received \$801,000 as his share of the total federal recovery.

## Possible Additional Amendments Affecting Tax Exempt Organizations

Two tax related amendments have been proposed by Senator Charles Grassley (R-IA) to healthcare reform legislation that could impact tax-exempt organizations.

One of the amendments is designed to ensure that tax-exempt organizations report governance and conflict of interest information as part of the annual IRS 990 reporting requirements. Grassley maintains that the amendment is necessary because “some lawyers have publicly questioned the IRS authority” to ask questions about governance and management policies on the Form 990 and “have indicated an intent to encourage clients to not answer such questions.”

The second amendment is directed at making justification of executive compensation more demanding by repealing the “rebuttable presumption of reasonableness if the organization follows certain processes and procedures to determine the compensation of its officers and directors.” Grassley feels that the IRS’s ability to challenge the reasonableness of compensation is limited because most institutions “complied with the safe harbor.” The amendment states, “Many of these organizations were able to use the rebuttable presumption procedures to justify paying compensation comparable to executives in for-profit organizations, including comparables from for-profit entities that had nothing in common with the tax-exempt organization”. This amendment, which is identified as a revenue raiser, also would require organizations to disclose in annual filings with the IRS a summary of comparables used to determine an executive’s compensation.

(Excerpted from the AHLA 9/25/09 Volume VII Issue 38 Newsletter)

## Red Flags Rule

Just a reminder, that as part of the Federal Trade Commission’s (FTC’s) implementation of the Fair and Accurate Credit Transactions (FACT) Act of 2003, most medical providers will need to comply with the “Red Flags Rule.” This Rule requires “creditors” – which the FTC defines to include most health care providers – to establish a program to prevent identity theft in their practices. The program must highlight Red Flags – that is, indicators of a possible risk of identity theft. This Rule was originally scheduled to go into effect November 1, 2008, but based on continuing advocacy effects by industry associations it has been delayed until November 1, 2009 “to give creditors and financial institutions more time to develop and implement written identity theft prevention programs.” If you need assistance in this area, the Medical Group Management Association’s webpage dedicated to this area may be helpful. Go to [www.mgma.com](http://www.mgma.com) and search for “Red Flags Rule.”

## Reminder

Changes to the physician self referral (“Stark”) law that were finalized in the 2009 Inpatient Prospective Payment System Rule go into effect October 1. These changes effectively prohibit most “under arrangement” relationships between hospitals and group practices. The new restrictions also prohibit space or equipment leases when the compensation is calculated based on a percentage of revenues attributable to services performed in the space. A similar “per click” prohibition also goes into effect October 1.

NOTE: FOR ADDITIONAL INFORMATION AND RESOURCES MAKE SURE YOU CHECK OUT OUR NEW WEBSITE: <http://www.baratzcpa.com>

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