

Court of Appeals Decision on Physician Fee Splitting Could Drastically Impact Physician-Hospital Management Agreements

- **Potential Criminal Liability and Treble Damages for Collections Services?**

On November 24, 2009, the Tennessee Court of Appeals released an opinion that could impact a wide range of physician-hospital management services agreements. In *Cookeville Regional Medical Center Authority v. Cardiac Anesthesia Services, PLLC*, 2009 WL 4113586 (Tenn. Ct. App. Nov. 24, 2009), the Court held that a contract under which a medical practice agreed to bill and “aggressively collect” for in-hospital anesthesia services provided under an exclusive arrangement (remitting 80% of collections to the hospital and retaining 20% of gross collections) was illegal and unenforceable under Tennessee’s criminal statute prohibiting physician fee splitting. Tenn. Code Ann. §63-6-225. This statute makes it a Class B misdemeanor for a licensed physician to divide a professional fee with any other person without the knowledge and consent of the patient or payor. Moreover, Tennessee law creates a private right of action by the patient and/or payor (and the State), and authorizes recovery of up to three times the amount charged in damages. Tenn. Code Ann. §63-6-226.

- **Percentage Based Compensation Provisions at Issue**

The opinion does not discuss the terms of the underlying agreement in any real detail. The Court cited only two portions of the contract, both dealing with compensation to the medical group. The first of these two contract provisions states that the group practice is to retain 20% of the gross collections, and the contract goes on to state that this is “in full and fair compensation to [the medical group] for its billing and aggressive collection efforts.” The second compensation provision cited by the Court provides for a flat monthly fee to be paid to the medical group. The Court interpreted this flat monthly payment as additional compensation for the medical group’s billing and collection activities, and not compensation for the medical services provided under the exclusive agreement. It is clear that the Court considered there to be no relationship between the fee arrangement and the cost of the goods and medical services provided.

- **Impact on Physician/Hospital Agreements?**

This opinion fails to address the concept of management services agreements, which commonly include the provision of billing and collection services. The Court did not state whether or not the medical group had assigned its fee to the hospital and was providing billing and collection services. These types of arrangements have become more prevalent following the “stand in the shoes” refinements to the federal Stark anti-referral laws that became effective on October 1, 2009, which resulted in the need to restructure many types of physician/hospital joint ventures. The Court’s failure to explicitly address the status of physician-hospital billing and collection arrangements, or the impact of fair market value compensation assessments under this type of agreement, raises an entirely new set of issues that hospitals and physicians should now consider in structuring financial relationships. Against this backdrop, it is more important than ever for both hospitals and physician practices to consult appropriate resources and obtain a careful review of federal and state regulatory issues prior to entering into any physician-hospital arrangement, especially a management services arrangement.

If you have questions regarding this Tennessee Court of Appeals decision, please contact [Bryant Witt](#) or any member of Miller & Martin’s [Health Care Practice Group](#).

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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