



ANESTHESIA PROVIDERS AND AMBULATORY SURGERY CENTERS SETTLE FALSE CLAIMS AND KICKBACKS CHARGES FOR OVER \$28 MILLION

On November 9, 2021, the U.S. Department of Justice announced that three anesthesiologists, two anesthesiology practices, and several ambulatory surgery centers (ASCs), their owners, management company, and an administrator entered into a settlement agreement to resolve allegations that the anesthesiology providers made payments to the ASCs in exchange for exclusive contracts to provide anesthesiology services.

The initial lawsuit was brought by a competitor anesthesiology practice, its physician owner and a vice president under the *qui tam* provisions of the Federal False Claims Act and the False Claims Act for the state of Georgia, which both allow private citizens (known as Relators) to file such actions on behalf of the government. The government later intervened in the lawsuit, which alleged that the payments to the ASCs violated the Anti-kickback Statute and thereby caused the ASCs to submit false claims under the False Claims Act. The Relators, who filed the *qui tam* action after having lost their exclusive contract to provide anesthesia services to one ASC defendant, will receive over \$4.7 million from the settlement.

Specifically, the Relator’s lawsuit alleged that the anesthesiology providers (including a managing partner) made payments to the ASCs for drugs, supplies, equipment and labor and provided free staffing (*e.g.*, a nurse to provide pre-operative assessments) at a number of ASCs in order to induce them to select these practices as their exclusive providers of anesthesiology services. ASCs, however, are already reimbursed for these items and staff through the global payments they receive from the Medicare and Medicaid programs as well as other payers.

This settlement is yet another example of the intense scrutiny anesthesia companies and ASCs face. It also sharply illustrates the government’s reinvigorated initiative to hold individuals – not just their affiliated entities – accountable for wrongdoing. Anesthesiologists, their practices and ASCs should closely review their arrangements to ensure that they do not violate the Anti-kickback statute.

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Should you have any questions regarding the above, please contact the [Garfunkel Wild attorney](#) with whom you regularly work, or contact us at info@garfunkelwild.com.

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