

## Settlement Sheds Light on Doctor Arrangements with Medical Device Industry

According to the *Washington Times*, hundreds of consulting arrangements between physicians and manufacturers of orthopedic devices are now being made public as a result of a settlement that ended a federal investigation into kickbacks paid by the industry. The *Times* reports that the arrangements with orthopedic surgeons included trips, meals, and consulting deals – some exceeding \$1 million per year. According to the *Times*, in some instances, physicians were invited to resort locations and paid \$5,000 per day to attend consultant meetings for periods as short as ten minutes.

The investigation culminated in late 2007 when the five companies responsible for 95 percent of the hip and knee surgical implant market avoided criminal prosecution for the kickbacks by agreeing to new corporate compliance procedures and federal monitoring under agreements with the Department of Justice (DOJ). Four of the companies, Zimmer Inc.; Depuy Orthopaedics, Inc.; Biomet Inc.; and Smith and Nephew, Inc., also agreed to pay a total of \$311 million to settle government claims under the federal anti-kickback statute and False Claims Act. A fifth company, Stryker Orthopedics Inc., avoided paying the civil settlement because of its voluntary cooperation with the U.S. Attorney's Office early in the investigation.

The four companies were accused of using consulting agreements with orthopedic surgeons as inducements to use a particular company's artificial hip and knee reconstruction and replacement products. The DOJ indicated that prior to the investigation, many orthopedic surgeons made decisions predicated on how much money they could make – choosing which device to implant by going to the highest bidder. The financial inducements in the form of consulting agreements were entered into with hundreds of surgeons throughout the 2002-2006 timeframe of the investigation. The probe revealed instances in which physicians did little or no work for the financial inducements but did agree to exclusively use the paying company's products. Physicians also failed to disclose the existence of their consulting relationships to the hospitals where the surgeries were performed and, more importantly, to the patients that they treated.

As a result of the settlement, physicians must now disclose their consulting agreements with their patients, and the manufacturers are required to post the names of each consultant on their Web sites.

## Public Supports Employer Role in Paying for Health Care

Eighty-one percent of Americans believe that achieving the goal of health insurance for all will require employers to provide health insurance to their workers or contribute to the cost of coverage, according to a survey released by The Commonwealth Fund. Nearly nine of ten (88 percent) Democrats, nearly three-quarters (73 percent) Republicans, and nearly four in five (79 percent) Independents would support such an employer "play or pay" requirement. Additionally, the survey found that a wide majority of Democrat (67 percent), Republican (66 percent), and Independent (70 percent) voters believe that health insurance costs should be shared by individuals, employers, and government. The poll also found that 68 percent of Americans favor requiring individuals to have health insurance, with government assistance for those who cannot afford it.

## Health Quiz

1. A federal settlement involving kickbacks to physicians by certain medical device manufacturers included civil payments totaling \$311 million.  
(a) True  
(b) False
2. According to a survey released by the Commonwealth Fund, Democrat, Republican, and Independent voters overwhelming support an employer "play or pay" proposal for employee health insurance.  
(a) True  
(b) False
3. CMS projects health care spending could double to \$4.3 trillion by 2017.  
(a) True  
(b) False
4. Which state has a approved universal health care program?  
(a) Vermont  
(b) Maine  
(c) Massachusetts  
(d) all of the above
5. A Dartmouth University health expert estimates that up to one-third of health care expenses are unnecessary.  
(a) True  
(b) False

## Study Raises Conflict Questions with Doctor Referrals to Physician-Owned Facilities

A recent study released by the *Health Affairs Journal* reinforces the conflict of interest concerns that have been raised regarding physician ownership in specialty-hospitals or ambulatory surgical centers. According to the March report, physicians are more likely to refer well-insured and self-pay patients to ambulatory surgical centers and to refer lower-paying Medicaid patients to hospital outpatient facilities. This trend is raising concerns that such practices could jeopardize funding for safety-net hospitals where the patient mix is dominated by less-lucrative Medicaid patients and the uninsured.

The practice of doctor referrals to physician-owned facilities has raised questions about whether doctors have added incentives to order certain tests and procedures performed at facilities in which they have a financial interest. For years, elected leaders at the state and federal levels have grappled with the issue, and they continue to do so today. Earlier this month, the United States House of Representatives added a provision to the mental health parity bill that would limit doctors' ownership in existing physician-owned hospitals to 40 percent and an individuals' stake to no more than two percent. The Senate version of the mental health parity bill was approved last fall and does not contain the provision. As in the past, fierce lobbying by the physician community is expected to have considerable impact on the survival of the ownership limits provision. According to the *Health Affairs* report, advocates for physician ownership argue that such arrangements increase the efficiency of managing the facilities and the scheduling of patients.

The conflict of interest concerns are not the only reason the physician-owned hospitals have faced increased scrutiny. Two deaths at specialty hospitals, including one in Texas, prompted the U.S. Senate Finance Committee to request an investigation into patient safety at the facilities. The findings released by the Office of Inspector General (OIG) found that only "about half of physician-owned hospitals have emergency departments, the majority of which had only one bed." Additionally, the report found the facilities lacking in nursing staff and physician access. Recommendations from the OIG to address the safety deficiencies are expected.

Source: *Health Affairs Journal: Where Do I Send Thee? Does Physician-Ownership Affect Referral Patterns to Ambulatory Surgery Centers?*, Jon R. Gabel, Cheryl Fahlman, Ray Kang, Gregory Wozniak, Phil Kletke, and Joel W. Hay.  
<http://content.healthaffairs.org/cgi/content/full/hlthaff.27.3.w165/DC1>

## Genes Linked to Prostate Cancer are Identified

Five genetic markers that can help predict a man's risk of developing prostate cancer have been identified, according to researchers from the Wake Forest University School of Medicine. The findings, presented by Jianfeng Xu, M.D. in the January 16, 2008 online issue of the *New England Journal of Medicine*, showed that each of the common genetic variants was independently associated with the risk of prostate cancer. According to the study results, men with four of the five variants had a 400 to 500 percent greater chance of developing the cancer than men with none of the variants. For men with the gene variants and a family history of prostate cancer, the risk of developing the disease increased more than 900 percent. The research revealed that the five variants and a family history of prostate cancer could be linked to 46 percent of prostate cancer patients.

Saliva and blood test to detect the genes are currently being developed, with investigators hoping to make them available in the next few months.

Trivia answers: 1. a (True) 2. a (True) 3. a (True) 4. d (all of the above) 5. a (True)

## Birthdays

### April

2 – Rep. Delwin Jones  
4 – Sen. Dan Patrick  
4 – Rep. Craig Eiland  
5 – Rep. Larry Phillips  
6 – Rep. Rick Hardcastle  
7 – Sen. Rodney Ellis  
7 – Rep. Alma Allen  
8 – Rep. Byron Cook  
20 – Rep. Jodie Laubenberg  
21 – Rep. Helen Giddings  
26 – Rep. Myra Crownover  
28 – Rep. Paul Moreno