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McAllen chronicles continue

Universal's settlement brings more finger-pointing

By Gregg Blesch
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Over the summer McAllen, Texas, became the \$600 toilet-seat cover of the 2009 healthcare reform debate: an emblem of irrational and wasteful government spending.

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So the news was met with keen interest in some quarters when a group of McAllen hospitals owned by for-profit Universal Health Services agreed to pay

\$27.5 million to settle a False Claims Act lawsuit alleging an array of kickbacks and prohibited financial arrangements with physicians.

Physician Hospitals of America, a trade group representing physician-owned hospitals, issued a news release essentially saying: See? McAllen's not our fault. Instead, blame "large, corporate hospitals who now owe millions for their illegal contracting schemes."

The Justice Department contends that the group of UHS hospitals doing business as South Texas Health System rewarded physicians' referrals with sweetheart leases, medical directorships and other financial perks. In the settlement agreement, UHS denies those characterizations and does not concede any wrongdoing or liability.

UHS, founded 30 years ago by Alan Miller, who remains CEO and chairman, has not previously faced similar allegations involving its

26 acute-care facilities. The King of Prussia, Pa.-based company first disclosed the investigation to investors in 2006 and on Oct. 29 reported the conclusion along with its third-quarter earnings of

\$51 million on \$1.3 billion, bettering its 2008 performance for the same period by 41%. The Justice Department last week joined an unrelated lawsuit alleging a UHS-owned residential youth facility in Marion, Va., billed Medicaid for substandard care.

The broader reverberations of the case involving UHS' three hospitals in McAllen and neighboring Edinburg stem from an article published in the June 1 issue of the New Yorker, in which surgeon and author Atul Gawande explores why Medicare spent twice the national average per enrollee there in 2006. The article reportedly was much discussed in the White House and was blogged about by White House Budget Director Peter Orszag.

President Barack Obama mentioned the McAllen article in his June 15 remarks to the American Medical Association in order to illustrate that Medicare's payment incentives are out of whack. "It's a model that has taken the pursuit of medicine from a profession—a calling—to a business," Obama lamented. "That's not why you became doctors."

But Molly Sandvig, executive director of Physician Hospitals of America, said she believes that her members' opponents have unfairly used the controversy about McAllen to blame physician ownership for out-of-control healthcare spending.

The sweeping healthcare legislation emerging in the House and Senate would eliminate what's called the "whole hospital" exception to the Stark law, which restricts physicians' financial arrangements with organizations to which they refer patients for Medicare services. Unless their facility is grandfathered, physicians with an ownership stake in a hospital would no longer be able to refer patients there, though negotiations continue on the matter (See story, p. 8).

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In his article about McAllen, Gawande recounts a visit to the lavish campus of Doctors Hospital at Renaissance. He asserted in a follow-up online post, and citing data from the Dartmouth Atlas of Health Care, that Medicare spending in McAllen increased in the 1990s in sync with physician ownership of imaging centers, surgery centers and hospitals, as well as physician revenue-sharing by home-health agencies.

"I don't think that assertion is correct at all," Sandvig said. Doctors Hospital, she pointed out, has never been targeted by the kind of allegations leveled at UHS' South Texas Health System, which itself has blamed the entry and growth of Doctors Hospital for erosion of profitable service lines.

Asked whether she believes UHS' alleged relationships with physicians fully explain the aberrant Medicare spending in McAllen, Sandvig replied that "there are a lot of factors that come into play." But, she added, while a parade of hospitals and systems have paid millions of dollars to settle allegations of paying for referrals, physician-owned hospitals take the rap for polluting medical decisionmaking with money. "It's never been shown to actually occur," she said.

The Justice Department's interest in UHS' South Texas hospitals was piqued by a whistle-blower lawsuit filed in 2005 by Bruce Moilan, described in court documents as system director for materials management from 1999 to 2009. Moilan's most recent amended complaint describes a few dozen financial arrangements between the South Texas hospitals and referring physicians alleged to violate the anti-kickback statute and the Stark law, many of them involving interest-free and forgiven loans or free advertising, equipment, furniture, housekeeping and office space. Moilan alleged that a ranch owned by a physician's wife was paid \$20,000 a year purportedly for "game-hunt hunting privileges" but in fact to induce referrals.

In the settlement agreement, however, the government limits its scope to arrangements with seven physicians (not including the game ranch). In a full-page written statement, UHS noted that the short list stands in contrast to "thousands of pages of documents detailing" South Texas Health System's financial arrangements with hundreds of physicians. "There were no allegations and no evidence of any overutilization by the physicians at (South Texas Health System) or any unnecessary procedures or treatment provided."

The settlement calls for South Texas Health System to enter a five-year corporate integrity agreement with HHS' inspector general's office. In the government's news release announcing the settlement, Inspector General Daniel Levinson said, "Improper financial arrangements like these can increase the cost of healthcare by shifting provider attention to the quantity of treatments, rather than keeping it focused on the quality of care."

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