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## CoxHealth reaches settlement with U.S. Justice Department

CoxHealth and CoxHealth affiliate, Cox HPS of the Ozarks, Inc., announced on the Cox Web site early today that they have reached an end to a three-year process with the federal government and have finalized a settlement agreement with the U.S. Department of Justice.

The announcement coincided with a major administration and staff meeting at 8:30 a.m.

“CoxHealth can now move on with plans that we have had to put on hold due to the constraints we were under while this process was taking place,” CoxHealth President and CEO Robert H. Bezanson said in a six-page news release on its Web site.

“We will finally be able to focus more fully on our mission and begin the expansions and other projects that our growing community needs,” Bezanson is quoted saying.

The settlement negotiated with the U.S. Department of Justice is for an initial payment of \$35 million with five additional \$5 million payments per year, Cox said in the release.

There will be annual interest at 4 percent on the deferred amounts, Cox said.

All details in the news release are attributed to Cox officials. No information or quotes are attributed to Department of Justice officials.

“The settlement revolves around potential errors made by Cox many years ago in interpreting highly complex Medicare billing regulations and in structuring business relationships with physicians,” Bezanson said in the news release.

“In almost every instance of what is included in the settlement, the issues were identified by hospital administration and the results of our review were reported to the government.”

None of the government’s claims against CoxHealth involved the quality of patient care or safety, the release said.

Similarly, there were no findings by the government that CoxHealth had billed the government for any services that were not actually provided, Cox said in the release.

In a separate agreement with the Office of Inspector General of the U.S. Department of Health and Human Services, the Cox news release said it has agreed to participate in a five-year program of intensified legal compliance education for employees, physicians and others associated with CoxHealth, as well as heightened monitoring and reporting to the Department.

“Because we already have a strong internal Corporate Integrity program here at CoxHealth — which includes extensive annual compliance education - we feel very confident that we as an organization will be able to honor this commitment,” Bezanson said in the news release.

“Every health care organization in this country that chooses to participate in Medicare and Medicaid is challenged to navigate the very same maze of regulations without committing errors,” said John Squires, chairman of the CoxHealth Board of Directors, in the news release.

In the past decade, numerous other well respected hospitals and health care organizations— including Harvard University’s Beth Israel Medical Center, Columbia University, Corning Hospital,

Johns Hopkins University, Mount Sinai Medical Center, Mayo Clinic, and Sharp Medical Center of San Diego — have been subject to similar government investigations on potential errors relating to Medicare and Medicaid, the Cox news release said.

Here's how Cox says the settlement amount was determined:

"These health care laws are very complex and are very unforgiving," Bezanson said in the news release today.

"They require that the government demand repayment, which can be very large. In fact, given the size of CoxHealth and the number of patients we treat on a daily basis, one potential error in interpreting a billing regulation can affect every claim filed thereafter — in our case, tens of thousands of claims," Bezanson said in the release.

"Since damages can be assessed on a per claim basis, the repayment can quickly result in an amount that is well beyond our ability to pay," Bezanson said in the news release.

"The government began its settlement negotiations by taking the position that Cox should repay every claim the government alleges we improperly billed to Medicare," board chair Squires said in Cox's news release. "The amount of these alleged damages exceeded the amount Cox could pay.

"Given the magnitude of the repayment if we were to go to trial and lose, which is always a possibility with jury trials, we negotiated with the government until we reached an amount we could pay and still continue to fulfill our mission to serve the community now and in the future," Squires said in the news release.

"In addition the federal government can impose a pretty large consequence if a hospital will not settle, since it has the power to exclude hospitals from the Medicare program, which means a hospital can no longer accept Medicare or Medicaid patients. No tax-exempt hospital can survive an exclusion from Medicare," Bezanson said in the release. "This would essentially shut down a hospital — a devastating event to any community... and that weighed heavily on our minds," Bezanson added in the release.

Moving forward

"The Board of Directors determined that the organization and our community had been through enough, and that it was in the best interest of CoxHealth and those we serve, to settle with the government rather than engage in litigation that would take many more years to resolve and cost millions in legal fees," said Dona

Elkins, Board of Directors member, in the news release.

"Our Board and management team have been keenly aware for some time of the need to put the investigation behind us so we can move forward with crucial expansion projects that are necessary to serve the growing needs of our community," Elkins said in the news release.

Squires said in the release, "Words can't express how difficult the decision was to agree to a settlement amount of this magnitude, but we as board members, along with senior leadership and those advisors with prior experience in such negotiations, finally came to the conclusion that agreeing to the settlement amount was the better path for the organization and the community in the long run.

"We fully support the leadership, employees, and physicians in their future efforts and have a strong commitment to the people we serve in the region," Squires said in the news release.

Funding repayment

CoxHealth also outlined how it will fund the required repayment.

"The Board of Directors and leadership of CoxHealth have been reserving funds from the time we knew there would be an impact from the investigation," Bezanson said in the news release.

"These monies, along with some that we have had in a long-term reserve fund, will pay for the initial installment of the settlement," he said.

"This reserve fund has been in existence for many years and is one that helps us maintain enough cash to allow us to borrow money at better interest rates," Bezanson said.

"Use of funds from the reserve fund will not jeopardize our ability to begin our much-needed expansion projects, since we will finance these projects through bonds, and our bond ratings will not suffer as a result of drawing down on this reserve," Bezanson said in the prepared online statement.

"CoxHealth will continue to have a sound financial foundation that will allow us to continue to meet our mission," Squires said in the news release.

"We also have a low cost structure, and we intend to stay cost competitive," he added in the release. "CoxHealth will remain financially equipped to continue to serve the residents of southwest Missouri, thanks to years of sound financial management and reserving funds for unexpected situations such as this."

#### Investigation issues

In the news release, Cox also described what it said were the two primary issues in the government's investigation.

The first issue was dialysis billing and medical directorships.

Kidney dialysis services are governed by unique and highly technical Medicare billing regulations that can be interpreted in different ways, the Cox news release says.

"CoxHealth determined that under one interpretation, it may have billed dialysis services provided through its Ozarks Dialysis Services, "ODS," from 1999 to 2004 using a method it was not eligible to bill under," according to the news release.

"Similarly, medical director agreements with physicians are also subject to different interpretations," the release said. "CoxHealth determined that again, under one interpretation, the way it structured its dialysis medical director agreements at ODS from 1996 to 2004 may have been incorrect."

Cox said in the news release that it self-reported these issues to the government in January 2005.

Cox reiterated in the release that "none of the government's allegations relating to dialysis billing involved quality of patient care or safety. In addition, there were no claims that payments were paid for services that were not provided."

The second issue in question was compensation to physicians, the release said.

"The government's rules regarding payments made to physicians and their practices have shifted dramatically over the last decade," the release said.

"CoxHealth internally discovered that under one interpretation of these rules, it may have provided improper compensation to physicians with Ferrell-Duncan Clinic, Inc., "FDCI." FDCI is a separate physician corporation — not owned by CoxHealth — that is under contract with Cox to provide professional services to Ferrell-Duncan Clinic (which is owned and operated by CoxHealth)," Cox said in the news release.

It continued: "CoxHealth determined that from 2000 to 2004, we may have paid physicians from a revenue source from which they may not have been eligible to be paid.

"The results of hospital administration's review were reported to the government in February 2005," Cox said in the release. It added, "None of the government's claims relating to FDCI's physicians involved quality of patient care or safety. In addition, there were no claims that FDCI's physicians were paid for services that were not provided."

#### A trying time

Bezanson added in the news release, "This process has been trying for just about everyone at CoxHealth. Despite that, our people have remained dedicated and loyal to our mission, day in and

day out. We cannot fully express our appreciation for their steadfast commitment to serving and caring for our patients and our community.”

Cox made available on its Web site more information about the settlement including copies of the official agreements with the U.S. Department of Justice and the U.S. Department of Health and Human Services. The site is [www.coxhealth.com/settlement](http://www.coxhealth.com/settlement).

#### Future Cox projects

In the same news release detailing the settlement, Cox outlined what it called “CoxHealth’s reinvestment in the community” that it will proceed with now that the settlement agreement is finalized.

The projects:

- Cox South Emergency Department Expansion: CoxHealth will break ground in spring 2009 for a 78,000-square foot Level II emergency department adjacent to the current outpatient center.

The new ED will house five trauma rooms, 57 universal exam rooms, and a 25-bed observation unit, the news release said. In addition, it will have an embedded radiology department that will include an MRI suite, CT scans, ultrasound rooms and X-ray and fluoroscopy rooms.

This is a multi-phase project and the first step will be to construct an addition on to the existing parking garage on the Cox South campus.

The relocation of the emergency department and the addition of the new garage will displace surface parking and create a need for additional parking capacity, the news release said.

This garage addition will increase the total parking on the campus from 1,500 to 1,786 spaces, the release said.

CoxHealth will also make improvements to the roadway system on the Cox South campus to accommodate traffic flow in preparation for the parking garage and the emergency department construction, Cox officials said in the news release.

It said the project will begin in early summer with completion expected by March 2009.

“As a Level II Trauma Center, Cox must be ready to accommodate critically injured patients,” the release said. “The emergency department facilities across the community have frequently been overwhelmed and maximized due to the growth of the community and use of emergency departments by patients unable to obtain care elsewhere,” the news release said.

- Walnut Lawn Orthopedic Hospital: CoxHealth plans to further develop Cox Walnut Lawn as an orthopedic hospital due to the growth in the need for orthopedic services in an aging, yet active population, the news release said.

The project will create a new façade and front entry for the hospital, it said, and the renovation of the current surgery suite will include four new orthopedic operating rooms, nine additional PACU beds, and a new central sterile supply area, Cox said in the release.

Some 37 new private orthopedic patient rooms will be created for the facility, it said.

- Ambulatory Surgery Center/Medical Office Building Projects: Cox officials say in the new release that the health system will proceed with a 60,000-square foot, two story ambulatory surgery center and medical office building on the Cox Walnut Lawn hospital campus, several blocks north of Cox South hospital.

The surgery center will include about 16,000 square feet of the first floor and house four operating rooms, nine pre-op beds, and 13 post-anesthesia care beds, the news release said.

The medical office space will be used by CoxHealth physician groups, it said.

“Outpatient surgery volumes in the community have grown dramatically due to the conversion of many inpatient surgical procedures to outpatient through new technologies,” the news release said.

- Cox will also proceed with its ‘Second Century’ plans at Cox North, the news release said.

The first project at Cox North will be the new Cox College of Nursing and Health Sciences.

CoxHealth is also evaluating plans for a behavioral health hospital and a family medicine/urgent care facility on the Cox North campus, the news release said.

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