

Part B Insider (Multispecialty) Coding Alert

FRAUD AND ABUSE: Ignore Internal Audit Findings At Your Own Risk

Sweeping dirt under the rug could be costly.

A recent whistleblower lawsuit at a health system points to mistakes you should be avoiding in your organization. Genesys Health System recently paid nearly \$670,000 to settle a False Claims Act lawsuit initiated by an internal auditor, who blew the whistle on alleged upcoding of physician services.

What happened: The government alleges that the multi-facility organization overbilled Medicare from 2001 to 2007 for evaluation and management services rendered to cardiology patients, according to a Department of Justice release. The whistleblower in the case received a \$133,882 share of the settlement. "The relator can be proud that she brought these serious allegations of Medicare fraud to our attention and paved the way for the government to uncover the false claims," says **Terrence Berg**, U.S. Attorney for the Eastern District of Michigan, in a DOJ release. "It is important that anyone who has information about alleged fraud on the federal government come forward."

At issue: The case has the health care industry abuzz over the ethics of an internal auditor reporting an organization. Attorney **E. Michael Morris**, who represented the qui tam relator in the case, says his law firm examined that issue and concluded that the auditor should first try to remedy the problem with the organization internally, which the relator reportedly did in this case.

"But once the organization made the decision to not self-report it, we believe that our client was right to report it to Medicare," says Morris, with Morris & Doherty in Southfield, Mich. "This was a fairly serious case where the auditor found 100 percent upcoding."

Rationale: "If it later came out that someone was upcoding and you were the auditor on file, in theory, you could suffer some jeopardy to your auditing license," Morris tells Eli.

Taking that a step further, "theoretically," the auditor could face some "potential criminal liability," he says. Morris stresses, however, that he would not "be in favor" of an auditor turning whistleblower without giving an organization the chance to self-report and fix the issue. So what does the health system have to say about the case? The organization fully cooperated and followed "due diligence" with the DOJ to resolve "inadvertent documentation and billing errors related to certain physician claims," said Genesys spokeswoman **Cindy Ficorelli** in an e-mail statement to Eli.

Ficorelli also notes that the issue didn't relate to quality of care. "Consequently, the settlement was attained without an admission of liability on the part of Genesys, resulting in the conclusion of this matter."

To read the DOJ's press release on this settlement, visit www.justice.gov/opa/pr/2009/December/09-civ-1384.html.