

Eli's Hospice Insider

COMPLIANCE: 5Ways to Head Off Compliance Problems -- And Lawsuits

How carefully do you listen to your employees' complaints?

Whistleblower lawsuits like the recently unsealed one against SouthernCare Inc. hospice can do major damage, but there are important strides you can make to head them off.

False Claims Act lawsuits assault providers on multiple fronts. First, they can carry a big price tag due to the treble damages allowed for in the statute. That can result in whopping settlement amounts.

Second, a qui tam lawsuit settlement announcement can do major damage to a provider's image. It's much better to issue a release saying you found and self-reported a problem instead of that you had to settle a whistleblower suit, notes attorney **Robert Markette, Jr.** with Gilliland & Markette in Indianapolis. "That's bad publicity," Markette says.

Local news outlets often comb through every unsubstantiated allegation in the qui tam relators' suits, tarnishing your standing with referrals.

To head off costly and embarrassing whistleblower suits, take these steps:

1. Draw up and institute a sound compliance plan. The HHS Office of Inspector General "tells you to have a compliance plan for a reason," Markette stresses. "The whole reason for the compliance plan is to avoid this kind of thing."

Resource: The OIG's compliance guidance for hospices, which dates to 1999, is at www.oig.hhs.gov/authorities/docs/hospice.pdf.

2. Encourage a culture of compliance. It's not enough to have a compliance plan sitting on your shelf, notes Washington, D.C.-based attorney **Elizabeth Hogue**. Make sure all employees know you are committed to doing the right thing and expect them and yourself to live up to the compliance plan.

3. Focus on compliance hot spots. You may need to give extra attention to areas that regulators are targeting. For example, the OIG currently seems very concerned about hospice-nursing home relationships, Markette notes. Be sure your compliance plan adequately addresses this area and then be sure your practices adhere to your plan.

4. Be receptive to employee complaints. Hospices need to have "openness about concerns such as those brought forward by the qui tam relators in this case," Hogue maintains. "Many individuals in the hospice industry want to do the right thing. The right thing is clearly to bring any concerns to management first before staff members go to outside third parties." However, if staff complains and management does not appropriately address their concerns, employees have no choice but to take action outside of the organization.

"Management must work hard to make certain that staff members don't reach a conclusion that the only way to address the problem is to go outside the company," Hogue cautions.

5. Police yourself. Once you have proper compliance procedures and practices in place, you need to do your own checks and audits to make sure you're complying with them, Markette counsels. It's much less costly and embarrassing to fix problems yourself than to have regulators do it for you.