

Eli's Hospice Insider

Compliance: Head Off Fraud Allegations With These 4 Pointers

Whistleblower suits spark \$75 million payout.

Financial pressure isn't the only kind hospices are under when it comes to the ever-escalating scrutiny from Medicare and other authorities. You can also face serious legal ramifications if the government decides you've been up to no good.

VITAS Healthcare Services, VITAS Healthcare Corp., and VITAS parent **Chemed Corp.** have agreed to pay \$75 million to settle charges VITAS submitted false claims from 2002 to 2013 for hospice services to Medicare. "Today's resolution represents the largest amount ever recovered under the False Claims Act from a provider of hospice services," said Acting Assistant Attorney General **Chad A. Readler** of the **Department of Justice's** Civil Division. The DOJ "will continue to ensure that this valuable benefit is used to assist those who need it, and not as an opportunity to line the pockets of those who seek to abuse it."

The settlement, which resolves allegations from three different whistleblower complaints, should remind hospices to be "very careful and very clear with your documentation," urges attorney **Robert Markette Jr.** with **Hall Render** in Indianapolis. The DOJ announcement shows the feds are "trying to make a point about hospice" and their intentions to intensify their enforcement in the industry, he says.

"Hospice providers need to understand they are in the crosshairs," Markette adds.

"Recent enforcement actions make it clear that the 'honeymoon' for hospices is over," stresses Washington, D.C.-based healthcare attorney **Elizabeth Hogue**. "It's now open season on hospices despite their mission, just like other providers."

Hospices should be aware they could face settlements far steeper than the one VITAS is paying. This can actually be viewed as "a favorable settlement for VITAS, in as much as the potential claims were far more substantial than \$75 million," points out attorney **Brian Daucher** with **Sheppard Mullin** in Costa Mesa, California.

In addition to the settlement, VITAS has also entered into a five-year Corporate Integrity Agreement with the **HHS Office of Inspector General**, the DOJ notes in the release. The amount of the settlement to be shared with the multiple whistleblowers, **Laura Spottiswood, Barbara Urick, and Charles Gonzales**, "has not yet been determined," the DOJ says.

"This litigation and settlement demonstrate the commitment of the U.S. Attorney's Office to investigate and pursue hospice providers engaging in practices that abuse the Medicare hospice benefit," said Acting U.S. Attorney **Thomas M. Larson** of the Western District of Missouri in the release. "The integrity of the Medicare program must not be compromised by a hospice provider's financial selfinterest."

Take These 4 Steps To Guard Against Fraud Charges

Following VITAS' record-breaking fraud settlement, heed this advice from the experts to avoid being swept up in the feds' hospice dragnet.

- **Consider compensation carefully.** According to the feds, VITAS "set goals for the number of continuous home care days billed to Medicare and used aggressive marketing tactics and pressured staff to increase the volume of continuous home care claims, without regard to whether the patients actually required this level of crisis care," the DOJ says in its release.

VITAS also "rewarded employees with bonuses for the number of patients receiving hospice services, without regard to

whether they were actually terminally ill and whether they would have benefited from continuing curative care," the government alleged.

"Setting goals for any level of care and then backing into them, so to speak, should be avoided at all costs," Hogue warns. "This is especially true in view of the skills, proficiency, and drive of some marketing staff. Give them a goal of the amount of continuous care to be provided, for example, and they will go for it whether appropriate or not." Likewise, "pressure on clinicians to meet such goals is also inappropriate," Hogue adds.

- **Know your risk profile.** More and more, authorities are using your own billing data to single you out for scrutiny. If your agency's length of stay stats make you stand out from your peers, don't be surprised to find yourself the object of medical review scrutiny, fraud contractor examination, whistleblower lawsuits, or more.

Even just a few years ago, outlier LOS stats may have earned you some extra audit attention and a possible payback, Markette observes. Now, it could result in a punishing fraud settlement like VITAS'. »

"Understand your own numbers," Markette urges. Pay particular attention to benchmarking against providers in your own geographic area, he adds.

- **Shore up your documentation.** Having longer-stay patients than your peers or more on a higher payment level doesn't necessarily mean they are ineligible for hospice or that service level, Markette points out. You just must be very careful to make sure you have thorough and complete documentation that backs up your claims.

In the past, the patient's agreement to forego curative care was considered enough of a barrier to gaming the system, that reviewers often gave records, patients, and hospices the benefit of the doubt, Markette says. That practice continues no longer.

Instead of assuming reviewers will know the care is justified, clinicians must be very careful to spell everything out in the chart, Markette advises. Staffers must learn how to articulate all relevant facts and conclusions in the patient record. "The government will second-guess you," he warns.

Prioritize compliance. "What does your compliance program look like now?" Markette asks. Dusting off your unused compliance plan when surveyors hit the doorstep, auditors request claims documentation, or you get served with a whistleblower lawsuit will be too late, he emphasizes.

Resource: See the **HHS Office of Inspector General's** compliance guidance for hospices at <https://oig.hhs.gov/authorities/docs/hospicx.pdf>.