

Eli's Hospice Insider

Fraud & Abuse: Fraud Trial Could Give Hospices Another Tool To Fight Whistleblower Suits

Jury finds claims false in first phase of trial.

A trial that has caught the attention of the hospice industry and health care providers at large has produced its first milestone.

Last month, **AseraCare Hospice** faced charges in Alabama federal court that it pressured staff to admit and furnish hospice services to ineligible patients. The government's False Claims Act case against the for-profit hospice chain was sparked by whistleblowers in multiple states.

The trial is notable because it was "bifurcated," meaning jurors had to decide whether claims were false without hearing about AseraCare's practices; because providers often settle such cases instead of risking harsh penalties in court; and because the hospice is focusing its defense on the inability to exactly estimate patients' dates of death (see Eli's Hospice Insider, Vol. 8, No. 10). And the government's use of statistical sampling to estimate fraud is, as always, a point of controversy.

Now the jury in the case has found that 104 of the 121 claims they examined were false, according to press reports. The trial will move on to the second phase, where the jury must decide whether the company knowingly submitted false claims. Or AseraCare may choose to settle the allegations instead of proceeding with the trial.

Watch for: "The use of a split trial to preserve a jury's objectivity when considering the falsity of claims is currently an uncommon practice," notes attorney **Samantha Kingsbury** with law firm **Mintz Levin**. "However, other defendants may soon follow AseraCare's lead and seek bifurcated trials in the future," Kingsbury notes in analysis.