

Eli's Hospice Insider

Fraud & Abuse: VITAS Slapped With False Claims Lawsuit

Suit focuses on continuous home care.

More proof that the feds are cracking down on the hospice sector has emerged, now that the government has revealed it's filed a False Claims Act lawsuit against for-profit hospice chain **VITAS** and its parent **Chemed Corp.**

VITAS billed for continuous home care when patients really only qualified for routine home care, the **Department of Justice** contends in a complaint against the chain that operates in 18 states. And VITAS admitted patients who weren't really eligible for the benefit, the suit adds.

According to the complaint, VITAS set goals for the number of CHC days that were to be billed to Medicare, the DOJ says in a release. "The companies also allegedly used aggressive marketing tactics and pressured staff to increase the numbers of crisis care claims submitted to Medicare, without regard to whether the services were appropriate or were actually being provided."

For example: "The complaint contends that Vitas billed three straight days of crisis care for a patient, even though the patient's medical records do not indicate that the patient required crisis care and, indeed, reflect that the patient was playing bingo part of the time."

Marketing no-nos: Also, VITAS allegedly paid bonuses to staff based on the number of patients enrolled in the program and based on patients who were admitted for longer lengths of stay, the DOJ notes. And VITAS took adverse employment actions against marketing representatives who did not meet monthly hospice admissions goals. "These business practices resulted in the admission of patients who were not eligible for hospice care," the complaint says.

Another example: VITAS admitted a patient who showed no signs of a terminal condition and was described in VITAS' own records as, "very healthy given her age," the complaint alleges.

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VITAS "focused on maximizing Medicare reimbursement for as many patients as possible while disregarding patients' medical needs and Medicare guidelines," the complaint alleges. "Vitas regularly ignored concerns expressed by its own physicians and nurses regarding whether its hospice patients were receiving appropriate care."

Chemed's internal auditors and VITAS' employees were aware of the problems listed in the suit, "yet the problems continued to persist, even to this day," the government contends in the complaint.

Michael Rehfeldt, a former executive director with VITAS, filed a whistleblower suit with some of these allegations, says the law firm representing Rehfeldt, **Frohsin & Barger**. Rehfeldt cooperated with the government investigation. "In April, Rehfeldt qui tam suit was voluntarily dismissed preserving the right to re-file if necessary and making way for DOJ to

prosecute the alleged fraud in the present suit," the law firm says.

Target: VITAS' CHC billing was way out of the norm, the lawsuit states. VITAS' revenue for CHC as a percentage of total revenue averaged between 15.3 percent and 17.2 percent, while the crisis care revenue as a percentage of total hospice revenues nationwide from 2003 through 2005 ranged from 1.6 percent to 1.8 percent.

One reason may be because VITAS "marketed crisis care services to patients and their families as 'intensive comfort care' services, without mentioning that ... a patient had to be experiencing a short-term crisis and have acute medical symptoms," the government alleges. "One of Vitas's marketing brochures states that 'intensive comfort care' is available for 'symptoms causing distress to the patient or family.'"

"Vitas knowingly misled patients and their families to believe that the Medicare hospice benefit would routinely cover around-the-clock care for hospice patients, absent the requisite acute medical symptoms resulting in brief periods of crisis that must be present for crisis care to be covered by Medicare," the suit continues. "Because of this marketing ploy, patients sometimes chose Vitas over other providers, although the Medicare benefit is the same for patients regardless of the hospice program they choose. Vitas used similarly misleading techniques when it marketed its hospice services to potential referral sources of future hospice patients, such as physicians, nursing homes, and hospitals."

Response: "Chemed and VITAS have made significant investments in controls, systems and procedures to uphold the highest industry standards and to maintain compliance with all regulatory requirements," the companies say in a release. "Our compliance efforts are designed to ensure our services are provided only to eligible patients. Chemed and VITAS intend to defend this lawsuit vigorously."