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Eli's Hospice Insider

Lawsuits: $1 Million Fraud Settlement Highlights Dangers To Hospice

Are there whistleblowers lurking in your ranks?

A recent settlement of Medicare and Medicaid fraud charges shows where you should put your hospice compliance resources.

Hernando-Pasco Hospice Inc. (HPH Hospice) in Tampa, Fla., has agreed to pay $1 million to resolve allegations that it violated the False Claims Act by submitting false claims for hospice services to the Medicare and Medicaid program, the **Department of Justice** says in a release. The settlement was reached after the government intervened in a whistleblower case brought by two former HPH employees, **Heather Numbers** and **Greg Davis**, who had longstanding careers as social workers and managers at the company. Numbers and Davis will receive $250,000 of the settlement.

In the complaint they filed, Davis and Numbers alleged numerous misdeeds, mostly centering on management's efforts to boost census and profitability. Among Davis and Numbers' charges: the hospice admitted and recertified ineligible patients; furnished kickbacks to referral sources especially skilled nursing facilities in the form of free "support" care while the patients qualified for Medicare SNF payments; and avoided costly hospital stay financial burdens by revoking and readmitting patients without their consent.

The admission of ineligible patients was largely due to pressure from HPH management to increase census and long-stay patients, the complaint alleges.

For example: Managers told staffers that every patient should be admitted for at least 30 days whether they were terminal or not, the whistleblowers claimed. "Every inquiry = an admission," said one staffing presentation submitted as evidence. HPH also trained staffers to use high-pressure sales tactics on beneficiaries, such as telling them they only had 10 minutes left to decide whether to elect hospice. And HPH told sales staff to refrain from explaining the hospice benefit to potential patients particularly that they would have to forego curative care.

Employees who recommended patients for discharge due to ineligibility not meeting the six-month terminal prognosis were discouraged and denied, the complaint adds.

For example: A supervisor told one nurse she was "killing the census" when she recommended a patient's discharge in a team meeting, the complaint claimed. And the CEO and CFO vetoed recommended discharges for financial reasons, the qui tam relators said.

The whistleblowers estimated 30 to 40 percent of HPH's patients were ineligible for the hospice benefit.

Blank Revocation Statements Allow Hospice To Dodge Financial Responsibility

The complaint also alleges that HPH had all patients unwittingly sign blank election and revocation forms so the hospice could revoke and readmit a patient when she required costly palliative care HPH didn't want to pay for. And HPH could use the forms when the patients needed a break in billing to avoid suspicious-looking, overly long stays.

An HPH physician also allegedly changed visit dates on his face-to-face documentation to comply with F2F requirements for payment, the lawsuit claimed.

Finally, HPH entered into agreements with SNFs where it provided free care, the relators charge (see related story, p. 65).

Case Hits Hospice Hot Buttons

When the government intervened in the case, it took up the hot button topics that have been dogging the hospice industry. "HPH Hospice caused staff to admit ineligible patients in order to meet targets imposed by management, adopted procedures to delay and discourage staff from discharging patients who were not appropriate for hospice services, instructed staff to make false or misleading statements in patients' medical records to make them appear eligible when they were not, and failed to implement an adequate compliance program that might have corrected these problems," the DOJ says in its release. "The settlement also resolves allegations that HPH Hospice billed the government at higher reimbursement rates than it was entitled to receive, and provided illegal kickbacks when it provided free services to skilled nursing facilities in exchange for patient referrals."

"This settlement should send a message to providers that misconduct of this kind will not be tolerated," says **A. Lee Bentley, III**, Acting U.S. Attorney for the Middle District of Florida, in the release.

HPH spokesperson **Robin Kocher** has called the allegations "absolutely false," according to newspaper reports.

"HPH Hospice elected to settle this suit because we believed that doing so was in the best interest of our patients and families, allowing us to avoid the time and cost inherent in defending ourselves in court," HPH CEO **Tom Barb** says in a statement on the hospice's website. In advance of the settlement, "we voluntarily put a corporate compliance program into action in the past year and a half," Barb continues. The hospice says it has:

- Appointed a full-time compliance officer;
- Worked with a consulting firm to review agency records, documentation and related practices and to make recommendations;
- Established an agency compliance committee that meets monthly;
- Hired three full-time RNs to review and monitor all admission, re-certification and discharge documentation; and
- Implemented advanced training for administrators and staff which was kicked off with a compliance "boot camp" and staff in-services.

The relatively small amount of the settlement, $1 million for five years' worth of false claims, indicates that the feds didn't think the case was overly egregious, suggests attorney **Robert Markette Jr.** with **Hall Render** in Indianapolis.

But the government is showing an increasing propensity for enforcement in the hospice industry, observes attorney **John Gilliland** with **The Gilliland Law Firm** in Indianapolis. "Fraud and abuse enforcement has increased dramatically over the past few years," Gilliland points out.

This case "is similar to recent hospice settlements and announced cases" in that it focuses on eligibility and marketing practices, plus SNF relationships, says attorney **Deborah Randall** with **Deborah Randall Consulting** in Washington, D.C.

The HPH settlement is also another example of how qui tam lawsuits are on the rise, notes attorney **Marie Berliner** with **Joy & Young** in Austin, Texas. The number of whistleblower lawsuits "will probably continue to rise, given the relaxation of standards that make it easier for the government to prove its case as well as a higher share of the recovery going to the qui tam relators," Berliner predicts.

Note: For tips on heading off costly whistleblower lawsuits and enforcement actions in hospice, see a future issue of Eli's Hospice Insider.

For a copy of the whistleblower complaint, send an e-mail to editor Rebecca Johnson at rebeccaj@eliresearch.com with "HPH complaint" in the subject line.