

Eli's Hospice Insider

Lawsuits: Beware Whistleblower Lawsuits Triggered By These Red Flags

Two new settlements put hundreds of thousands of dollars in relators' pockets.

If your past patients with debility diagnoses, medical director relationships, or other hot button compliance areas won't pass muster, don't be surprised to see them as the basis of a qui tam lawsuit filed by employees.

One hospice chain is learning that lesson the hard way. As a result of whistleblower lawsuits filed by four former employees, **Compassionate Care Hospice Group Inc.** and two of its subsidiaries will pay \$4.4 million to settle fraud charges. In just one of the cases, the whistleblowers will receive \$350,000 of the settlement.

Case #1: Between April 2007 and April 2011, Parsippany, New Jersey-based CCH Group and subsidiary **Compassionate Care Hospice of Atlanta** paid illegal remuneration to five physicians to refer patients to CCH Atlanta and certify individuals as eligible for hospice services, the **Department of Justice** alleges. "The illegal remuneration took the form of (1) payments to a medical director in exchange for referrals and (2) sham contracts with associate medical directors in exchange for referrals," the DOJ says in a release.

The settlement resolves allegations filed by former CCH Atlanta employees **Cathy Morris** and **Josie King**. The DOJ doesn't disclose their portion of the settlement.

Case #2: CCH subsidiary **Compassionate Care of Gwynedd Inc.** in Bensalem, Pennsylvania, has agreed to pay \$2 million to settle charges that from January 2005 through November 2011, it admitted patients who did not need hospice care and billed Medicare for these medically unnecessary services. "The company admitted these patients by using a diagnosis of 'debility' that was not medically justified," the DOJ alleges in a separate release.

The settlement resolves allegations by two unnamed former employees, who will receive \$350,000 in the case, the DOJ says. In fact, CCH's total responsibility to the whistleblowers is \$600,000, according to one of the relator's law firms, **McInnes Law** of New York City. That amount also covers attorneys' fees.

More charges: The whistleblowers' complaint against CCH Gwynedd went beyond the charges mentioned in the DOJ's release, McInnes adds. The hospice upcoded for higher levels of care than necessary and paid kickbacks for referrals, the relators charged. CCH Gwynedd also fired one of the whistleblowers after she complained about fraudulent billing and "create[ed] a work environment that forced the other to quit," the law firm cites.

Reminder: This isn't the first time CCH has seen fraud charges. CCH New York agreed to pay \$6.5 million to settle fraud allegations ranging from care plan violations to staffing deficiencies (see Eli's Hospice Insider, Vol. 8, No. 4).

Could You Be A Whistleblower Target?

Don't be surprised if you may have disgruntled employees intrigued by filing a qui tam case. "The government encourages people to come forward by rewarding them for their information, typically 15 percent to 25 percent of any proceeds," McInnes says in its release about the settlement. And the relators actually got closer to \$360,000 in the case, the firm adds.

Plus, the feds seem especially keen on pursuing violations in this healthcare sector that serves vulnerable patients. The **HHS Office of Inspector General, Medicare Payment Advisory Commission, Government Accountability Office**, and other agencies and authorities have increased their interest in Medicare hospice fraud as the benefit's utilization and ratio of for-profit providers has risen sharply.

Red flag: The DOJ's mention of "debility" diagnoses in its Pennsylvania case may indicate concerns for hospices that have had a high percentage of those patients in the past. In 2014, the **Centers for Medicare & Medicaid Services** banned debility as a primary diagnosis for hospice claims.