

Eli's Hospice Insider

Lawsuits: Hospices Pay \$12.6 Million In Recent Whistleblower Cases

Higher hospice care levels, aggressive marketing draw scrutiny.

You can expect the number of whistleblower lawsuits filed by hospice employees to only go up, based on the big pay days some qui tam relators have seen lately.

Case #1: Three employees who worked at a regional hospice chain only "briefly" will rake in a cool million following the hospice's False Claim Act settlement. Baton Rouge-based **St. Joseph Hospice Entities**, which consists of 13 hospice facilities in Mississippi, Louisiana, Texas and Alabama, and **Patrick T. Mitchell**, its majority owner and manager, have agreed to pay \$5.9 million to resolve allegations that it submitted false claims for delivery of continuous home care hospice services to patients who were not entitled to receive CHC-level treatment, the **Department of Justice** says in a release.

St. Joseph was an outlier in CHC provision, and three former employees — **Deedy Diamond, Nichol Chaisson and Sandra Fairley** — who worked briefly for the company brought a qui tam suit about its CHC practices, the DOJ notes. The whistleblowers also alleged that St. Joseph enrolled beneficiaries who were ineligible for hospice due to prognosis, but the government did not take up that issue, according to the Associated Press.

In an email to the AP, Mitchell said billing rules are unclear and the hospice tried to do its best. He also pointed out that CHC saves Medicare money as compared to pricey hospitalizations, and allows patients to stay in their homes comfortably at end of life, the AP says.

"It is sometimes the case that companies and/or individuals will abuse the provision of this service through aggressive marketing practices, thrusting patients into services they really do not need in order to increase the company's reimbursement rate and its bottom line," U.S. Attorney **Gregory K. Davis** says in the release. "We will continue to investigate and root out this and other types of healthcare fraud," he pledges.

Case #2: CHC may have been St. Joseph's downfall, but GIP is what triggered a fraud settlement for **Alive Hospice Inc.** in Nashville. Alive is paying \$1.5 million to resolve allegations that it billed Medicare and TennCare for General Inpatient Care that wasn't necessary, the DOJ says in release.

The suit was initiated by whistleblower **Linda Anderson**, a former triage nurse for Alive. Anderson will receive more than \$263,000 of the settlement, the DOJ says.

"This matter is in no way related to the delivery of patient care, and there has been absolutely no suggestion by the authorities that Alive Hospice provides patients with anything but the highest quality care," Alive CEO **Anna-Gene O'Neal** says in a statement. "In fact, the government asserted that Alive Hospice provided a higher level of care to a small number of patients at the end of their lives than it, in hindsight, deemed was necessary. We strongly disagree and maintain that these cases were billed appropriately."

"Ironically, during the same period of the government's claims, Alive Hospice provided \$6 million in unfunded and underfunded care to patients who could not afford to pay," O'Neal added. Alive settled only to avoid legal costs, she said. O'Neal said the settlement will not impact the nonprofit's plans to expand into Rutherford County with a Murfreesboro

facility with a planned June 2016 opening, according to The Daily News Journal.

Target: "We are seeing a trend of false claims involving hospice providers," **HHS Office of Inspector General** Special Agent in Charge **Derrick L. Jackson** says in a release. "Providers are overbilling the Medicare program and taking advantage of patients at a particularly vulnerable point in their lives. HHS-OIG will continue to pursue providers who overbill these programs."

Case #3: Two former employees of **Guardian Hospice of Georgia** filed a whistleblower lawsuit in January 2012 and the government intervened in the case, notes the whistleblower firm representing the staff, **The Bothwell Law Group**, in a release.

"Guardian's business practices contributed to its submission of claims for patients who did not have a terminal prognosis of six months or less," the DOJ alleges in a release. Those practices included "failing to properly train its staff and medical directors on the hospice eligibility criteria, setting aggressive targets to recruit and enroll patients, and failing to properly oversee the Atlanta hospice," according to the DOJ. Justice also pointed out that Guardian is for-profit in the release.

Whistleblowers **Rose Betts** and **Jennifer Williams** "routinely witness[ed] non-terminal patients being treated," according to Bothwell. The qui tam relators "were told that it was necessary to keep the hospice's 'census' up, no matter what it took to keep Medicare/Medicaid paying for their care, including fabricating diagnoses and falsifying supporting documentation," they alleged in their suit. Guardian, **Guardian Home Care Holdings Inc.**, and **AccentCare Inc.** agreed to pay \$3 million to resolve allegations that from 2009 to 2012, Guardian knowingly submitted false claims to the Medicare program for hospice patients who were not terminally ill, the DOJ says. Dallas-based AccentCare acquired Guardian in 2011.

Target: "We will continue to aggressively pursue companies that abuse the Medicare hospice benefit to improperly inflate their profits," says Principal Deputy Assistant Attorney General **Benjamin C. Mizer**, head of the DOJ's Civil Division, in the release.

Case #4: Serenity Hospice and Palliative Care former employee **Cheryl Sifford** will receive about \$440,000 of the \$2.2 million settlement the Phoenix hospice agreed to, reports The Republic newspaper. Serenity founder and former president **Ruth Siegel** agreed to a five-year exclusion from Medicare in the deal, the **Department of Justice** notes in a release.

In her suit, Sifford accused the hospice of admitting ineligible patients and furnishing kickbacks like limo rides and concerts to referral sources, The Republic says.