

Eli's Hospice Insider

Lawsuits: More Hospice Enforcement On The Way, Lawsuit Indicates

Get ready to defend your hospice claims if you treat long-stay patients.

If you had any doubts that the feds have their eye on the hospice industry, a newly unsealed whistleblower lawsuit joined by the government should put those doubts to rest.

Former **AseraCare Hospice** executive director **Marsha Brown** and clinical manager **Dawn Richardson** originally filed suit against the Plano, Texas-based hospice chain in 2009. The U.S. joined the qui tam suit, which was unsealed in U.S. District Court for the Northern District of Alabama last month. AseraCare operates 65 locations in 19 states and is owned by long-term care company **Golden Living**, the complaint says.

The feds accuse AseraCare of a number of misdeeds culminating in billing Medicare for patients who were ineligible for hospice due to the six-month terminal prognosis requirement.

For example: Clinical staff were pressured to meet census goals established by the corporate office, the complaint alleges. If they didn't meet the goals, they were disciplined.

AseraCare also "avoided having physicians make all determinations that a patient was terminally ill," according to the complaint. They instead urged physicians to rely on admitting nurses' judgment on an eligibility determination.

Various staff members and an AseraCare auditor repeatedly warned management that ineligible patients were being admitted and kept on service, the government charges. The complaint lists five example patients, four of which had debatedly non-specific diagnoses. Two had a diagnosis of debility, one failure to thrive, and one dementia.

The government is cracking down on these "vague" diagnoses for hospice patients, cautions attorney **Robert Markette Jr.** with **Benesch Friedlander Coplan & Aronoff** in Indianapolis. "Medicaid is clearly very concerned about these open-ended diagnoses," Markette says.

In a release responding to the suit, AseraCare seems to agree. "Consistent with hospice providers nationwide, AseraCare Hospice has evolved in recent years to treat more terminally ill patients with unpredictable disease progressions," AseraCare president and chief medical officer **David Friend**, MD, says in the release. "It is simply not possible to precisely predict how patients will respond to challenging illnesses such as end-stage heart, lung and kidney disease, AIDS, and Alzheimer's."

Plus: "Each one of our hospice patients is in our care because two independent physicians have certified his or her eligibility," Friend points out.

"This action is especially troubling because we believe it could constrain certain patients -- most notably those who suffer from unpredictable disease -- from utilizing the hospice benefit," AseraCare general counsel **David Beck** says in the release. "The allegations contained in the complaint are without merit, and AseraCare operates in full compliance with the law."

Financial Goals Shouldn't Drive Clinical Decisions

The allegations about AseraCare's marketing program and admissions goals look similar to the heat that the four publicly traded home care companies have taken for their therapy practices, Markette tells **Eli**. Anything in your marketing program that suggests that clinical and/or admission decisions may be based on financial concerns "will get you in trouble every time," he notes.

Watch out: That includes paying bonuses to your hospice marketers based on length of stay, Markette warns. "You get what you pay for," and if you pay for long-stay patients, you risk getting ones that aren't eligible for Medicare, he says.

Another target: The government may have been more willing to join this whistleblower case because the defendant is a for-profit large chain. The feds have been showing increasing distrust of for-profit providers in the hospice industry, Markette observes.

Enforcement for hospice providers has been ramping up, but you can expect it to kick into a higher gear this year, Markette predicts. That's especially true for those providers in perceived high-risk areas --for-profits, those serving long-stay patients, and hospices serving nursing home patients, for example. There is "an ongoing witch hunt for for-profits," Markette says.

In previous years, hospices have largely been able to avoid scrutiny by the **HHS Office of Inspector General** and other federal agencies, Markette recalls. Now the growth in hospice utilization (and spending) and for-profits are changing that.

Note: For tips on how to deal with the oncoming scrutiny of hospices, see future issues of Eli's Hospice Insider.