

Eli's Hospice Insider

Lawsuits: Whistleblower Lawsuits Menace Hospices

The damage a qui tam lawsuit does to your reputation may be as bad as the financial penalty.

The hospice industry continues to grow, and so does your risk of falling victim to a whistleblower lawsuit.

In fiscal year 2011, whistleblower lawsuits accounted for more than \$2.2 billion in health care fraud recoveries, notes Washington, D.C. law firm **Dow Lohnes** on its website. Whistleblowers were awarded more than \$470 million in the suits, according to **Department of Justice** statistics.

Multiple high-profile whistleblower cases in the home care industry have been settled in recent months. Hospice chain **AseraCare Hospice** is currently battling a whistleblower suit filed by two former nurse employees (see Eli's HCW, Vol. 5, No. 2). And earlier this year, **Gentiva Health Services Inc.** paid \$25 million to settle false claims charges originally raised in three lawsuits filed against **Odyssey Healthcare** by former employees. The whistleblowers shared a \$4.6 million reward from the settlement.

Similar suits are likely on the way. "I look for more whistleblower cases in hospice and Medicare home health," predicts financial consultant **Tom Boyd** with **Boyd & Nicholas** in Rohnert Park, Calif. "As more get reported and the monies to the whistleblower are known, it will generate even more activity."

Such suits "are very lucrative for the relator," points out consultant **Joy Barry** with **Weatherbee Resources** in Hyannis, Mass.

Plus, there are simply more qui tam attorneys who are advertising more heavily, notes attorney **Robert Markette Jr.** with **Benesch Friedlander Coplan & Aronoff** in Indianapolis.

More encouragement: Whistleblower suits don't seem to take as long to wind their way through the system as they used to, Boyd adds. And the stigma of being a whistleblower has lessened. Formerly, an executive who filed a qui tam suit could kiss any employment prospects in the industry good-bye. Now it "has become more politically correct," Boyd believes.

Another factor augmenting the growth of whistleblower suits is the degree to which hospice providers have become aggressive. The more aggressive their behavior, the more likely an employee is to feel pressured and seek an outside outlet to air grievances, experts caution.

Qui tam cases also may be on the rise due to who the relators are. Disgruntled former employees aren't the only ones filing suit. Competitors may also take to court to address wrongdoing in their eyes, Markette notes.

And consultants are also filing higher numbers of whistleblower suits, Boyd points out. A recent whistleblower suit against **LHC Group Inc.** was sparked by such a lawsuit, he notes. (For a tip on avoiding this type of case, see related story, p. 45.)

The toll a whistleblower takes on your organization isn't only financial. It can also do significant damage to your reputation in the community, which can result in reduced referrals and census.

"You don't ever want to be named in a suit," Markette stresses. Even if you successfully defend against the suit, most referral sources and clients will remember that the suit was filed, not how it was resolved.

Pending suits can also cause good employees to jump ship, Barry warns.

And a suit can distract your organization from its primary job -- furnishing quality patient care, Barry adds.

Recipe for disaster: Home care providers find themselves facing employee-filed qui tam suits in two common scenarios, Barry explains -- when staff feel they have nowhere to file complaints internally, and when clinical staff feel pressured to follow directives given by the business/finance/marketing department.

Even if clinicians don't take orders directly from the business side, they may feel unofficial pressure, Barry says. Clinicians may want to "help out" friends in admissions or marketing, leading them to admit patients who really aren't appropriate.