

Eli's Hospice Insider

LITIGATION: Big Hospice Settlement Puts Industry in the Hot Seat

Hospice eligibility and 6-month prognosis focus of successful whistleblower lawsuit.

A hospice chain's \$25 million settlement may make life harder for all hospices, thanks to increased scrutiny placed on the industry.

Birmingham, Ala.-based SouthernCare Inc., a hospice chain with 95 offices in 15 states, has announced a \$24.7 million settlement with the U.S. Department of Justice and HHS Office of Inspector General to settle False Claims Act charges.

In lawsuits filed in 2005 and 2007, two former employees accused SouthernCare of admitting and billing for patients who weren't eligible for hospice. The employees, **Tanya Rice** and **Nancy Romeo**, will receive \$4.9 million from the settlement, according to the DOJ.

Enrollment quota: In their suits, RNs Rice and Romeo alleged that SouthernCare trolled churches, nursing homes, and doctor's offices for patients, regardless of their eligibility. Romeo said employees risked losing their jobs if they didn't meet a quota of enrolling 21 patients each per month, according to the Birmingham News. Some patients were still receiving curative treatment and others didn't really need home care, the suits said. Some thought they were just receiving regular home care, the prosecutors alleged. One of the whistleblowers said a patient who had successful heart bypass surgery and stayed on hospice for four years apologized for not dying, reports theNews.

SouthernCare admitted no wrongdoing in the settlement. "The dispute was wholly unrelated to the quality of hospice care provided by SouthernCare, but rather, dealt with the criteria for determining when a patient is eligible to receive hospice services under Medicare rules," the company says in a release. "We are pleased to put this matter to rest so we can focus on what we do best -- serving patients and families with compassion and dignity -- rather than remain tangled in protracted legal issues," says CEO **Michael Pardy** in the release.

But the government says the privately held hospice chain "showed a pattern and practice to falsely admit patients to hospice care who did not qualify and to bill Medicare for that care." In addition to the payment, SouthernCare has entered a five-year corporate integrity agreement (CIA) with the OIG.

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In the past, hospices enjoyed relatively light scrutiny compared to other industries, but that won't last.

"Hospices are increasingly in the cross-hairs of regulators after many years of what often seemed like a 'pass' in terms of compliance," notes Washington, D.C.-based attorney **Elizabeth Hogue**.

Growth factor: Hospices should brace for increased scrutiny, predicts attorney **Robert Markette Jr.** with Gilliland, Markette & Milligan in Indianapolis. The Centers for Medicare & Medicaid Services has already had its eye on the hospice industry due to its explosive growth in recent years.

More whistleblowers: Providers can also count on False Claims Act suits continuing in popularity. Compared to criminal suits, civil qui tam suits like the SouthernCare one require a lower burden of proof, so government prosecutors like them, says Markette.

Editor's note: Hospice eligibility could also end up on Recovery Audit Contractors' hit list, predict experts. See the article on p. 13.

