

# Health Information Compliance Alert

## Compliance: 6 Ways to Head Off Compliance Problems -- and Lawsuits

### How carefully do you listen to your employees' complaints?

A hospice chain's \$25 million settlement may make life harder for all hospices, thanks to increased scrutiny placed on the industry -- but we've got six quick steps that can help you avoid a similar fate.

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 Southern-Care 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, the DOJ says.

To head off costly and embarrassing whistleblower suits, take these steps:

**1. Draw up and institute a sound compliance plan.** The HHS Office of Inspector General "tells you to have a compliance plan for a reason," says **Robert Markette, Jr.**, with Gilliland, Markette & Milligan in Indianapolis. "This whole reason for the compliance plan is to avoid this kind of thing."

**2. Encourage a culture of compliance.** It's not enough to have a compliance plan sitting on your shelf, notes Washington, D.C.-based attorney **Elizabeth Hogue**. Make sure all employees know you are committed to doing the right thing and expect them and yourself to live up to the compliance plan.

**3. Focus on compliance hot spots.** You may need to give extra attention to areas that regulators are targeting. For example, the OIG currently seems very concerned about hospice-nursing home relationships, Markette notes. Be sure your compliance plan adequately addresses this area and then be sure your practices adhere to your plan.

**4. Review eligibility criteria.** The SouthernCare settlement points to another hot spot: hospice eligibility and the six-month prognosis. This is a favorite target for surveyors, Markette notes. The Medicare Payment Advisory Commission has also been examining increasing lengths of stay and proposed payment reform related to the issue.

Now is a good time to review your own eligibility criteria and make sure you are adhering to Medicare guidelines and your own compliance plan. Everyone admits that predicting life expectancy is an inexact science, Markette notes. But if your patients' average length of stay has gradually trended up past the six-month point, it's time to take a look at your admission practices. "Be vigilant about who you are admitting," he advises.

Realize the difference between a patient with an incurable disease and one who is eligible for hospice with a six-month terminal prognosis.

**5. Be receptive to employee complaints.** Hospices need to have "openness about concerns such as those brought forward by the qui tam relators in this case," Hogue maintains. "Many individuals in the hospice industry want to do the right thing. The right thing is clearly to bring any concerns to management first before staff members go to outside third parties."

However, if staff complain and management does not appropriately address their concerns, employees have no choice but to take action outside of the organization.

**6. Police yourself.** Once you have proper compliance procedures and practices in place, you need to do your own checks and audits to make sure you're complying with them, Markette counsels. It's much less costly and embarrassing to fix problems yourself than to have regulators do it for you.

