

Health Information Compliance Alert

INDUSTRY NEWS: Texas Hospital Pays Nearly \$10 Million for Inflated Outlier Charges

'The consultant told me to do it' isn't a valid defense.

If you've increased your charges to potentially increase outlier reimbursement, you'd better have the documentation to stand behind your charges because the DOJ is waiting to pounce.

A Texas hospital recently agreed to pay \$9.99 million to settle allegations that it improperly inflated charges for inpatient and outpatient care to obtain outlier payments from Medicare, according to a March 26 Dept. of Justice (DOJ) press release.

This settlement is just the latest in a string of allegations that the DOJ has made regarding outlier payments. Last month, a New Jersey-based consulting firm paid nearly \$3 million to resolve allegations that it advised its hospital clients to increase charges to raise outlier payments.

There is nothing wrong with charging for higher outlier cases in accordance with the supplemental outlier payment system which Congress enacted to incentivize hospitals to provide care for patients with unusually high treatment costs, says **Gregory Piche** with Holland & Hart in Denver. "If the hospital inflates its costs to obtain a higher reimbursement rate from the government, however, that is fraud."

Although some hospitals insist that they billed the inflated outlier payments at the recommendation of a consultant, "it is hard to imagine a consultant would recommend defrauding the Medicare program," Piche says. "That is like kissing a cobra. Some snake charmers have gotten away with it, but the result for most is likely to be unpleasant."

However, if the consultant does offer you such advice, you can't plead ignorance. "A hospital must take responsibility for its billings regardless of whether billings occurred based on advice obtained from a consultant," says **Margaret Davino** with Kaufman Borgeest & Ryan in New York.

"There have been numerous examples of hospitals that hired consultants who assisted the hospitals with projects involving charges or billing, which charges or billing were later challenged by the government," Davino says. "Although the hospital often proffers a defense of 'the consultant told us it was okay,' the government takes the position that ultimately the hospital is responsible for its decisions and actions," Davino says.