

Health Care Settlement Reminds Hospices to Examine Their Compliance Plans

On July 11, 2006, one of the largest providers of hospice care in the United States, entered into an agreement with the United States Department of Justice ("DOJ") and the United States Department of Health and Human Services, Office of Inspector General ("OIG") to settle claims related to allegations that the hospice submitted, or caused to be submitted, claims for payment for services furnished to hospice beneficiaries who did not qualify for the Medicare hospice benefit. As part of the settlement agreement, the hospice agreed to pay nearly \$13 million to the federal government and entered into a corporate integrity agreement with the OIG.

Although the hospice admitted no wrongdoing in the settlement and has vigorously defended the compliance program it had in place during the time of the alleged conduct, this investigation serves as a reminder to hospice programs to remain vigilant in their compliance activities. In addition, because this matter originated from a whistleblower complaint and the whistleblower received more than \$2.3 million as a part of this settlement, this matter may embolden other potential whistleblowers in similar cases.

Hospices can do several things to strengthen their compliance programs. Our recommendations include the following:

1. Develop, implement and consistently follow a compliance program designed to detect potentially fraudulent activities. The OIG released guidance to the hospice industry in 1999 regarding the elements of effective compliance programs. The guidance is available on the [compliance guidance page](#) of the OIG's website. Having and following an effective compliance program will not only serve to curtail or eliminate fraud and abuse within the hospice program. In addition, the existence of an effective compliance program may also be emphasized by a hospice that comes under investigation by the DOJ or OIG. Based on the public statements made by the hospice subsequent to the settlement agreement, it was able to emphasize its existing compliance program in negotiating a favorable corporate integrity agreement with the OIG.
2. As part of a hospice's compliance program, have a transparent process to follow whenever an individual alleges that a troublesome, and potentially

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fraudulent, activity has occurred. Follow this process consistently whenever an allegation is made. This process likely will include a hotline or some other mechanism for individuals to register complaints, and documentation showing that the hospice investigated the complaint. The documentation should also show the findings of the investigation. Make sure your legal counsel is involved in this process, or is notified immediately upon receipt of an allegation.

3. Insist on complete and accurate documentation supporting hospice certifications and claims for payment. Because predicting a life expectancy of six months or less is an inexact science, supportive documentation is essential to be able to make the case later that a patient was in fact eligible for the Medicare hospice benefit. Recent revisions to Medicare hospice regulations also require that supportive documentation accompany certifications of terminal illness. For a more detailed discussion of these requirements, see our March 1, 2006 [publication](#) regarding the growing role of hospice medical directors.

A hospice cannot eliminate the risk of becoming a party to an investigation related to allegations of fraud and abuse. However, by building a robust compliance structure and by remaining vigilant, a hospice can significantly reduce its potential exposure to these types of actions.

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