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Hospital Settles FCA Case Over Social Admissions; Whistleblower Also Alleged Retaliation

By Nina Youngstrom

In a case about social admissions, San Mateo Medical Center (SMMC) and San Mateo County in California have agreed to pay \$11.4 million to settle false claims allegations in connection with billing Medicare for medically unnecessary inpatient admissions, partly because the patients had no other place to go, the Department of Justice said Aug. 6.^[1] The case was set in motion by a whistleblower, former hospital employee Felix Levy, who alleged in his False Claims Act (FCA) complaint that SMMC retaliated against him for raising billing concerns—including an allegation that someone from the hospital told the police that Levy was acting strange and “hoped he does not have a gun.”^[2] In a separate settlement with the hospital, the retaliation “matter was resolved to the parties’ mutual satisfaction,” said Ronald Foreman, the whistleblower’s attorney.

According to the FCA settlement,^[3] DOJ alleged that from Jan. 1, 2013, to Feb. 28, 2017, SMMC admitted some patients who didn’t require inpatient care, “including patients who were admitted for reasons other than medical status, including social reasons and lack of available alternative placements.” The hospital’s policies and practices contributed to billing Medicare Part A for the medically unnecessary inpatient stays, DOJ alleged, although the hospital knew they weren’t covered by Part A.

Medicare doesn’t pay for social admissions, which are also referred to as custodial stays, said Ronald Hirsch, M.D., vice president of R1 RCM. This is a challenging area for hospitals, because “many times patients are socially hospitalized because there’s no other place for them to be,” he said. “Hospitals everywhere do this. They are the safety net of the community.” For example, an elderly person may be found living in squalor, with no family members able or willing to care for them. Someone brings them to the emergency department, where they’re screened and stabilized, but if they have no acute medical condition, hospitals have no reason to keep them. Medicare doesn’t cover hospital stays for the convenience or safety of the patient. The problem is, “if there’s no safe discharge destination, you can’t send them back to nowhere,” Hirsch said. “Theoretically, they could go to a long-term care facility if there’s financing and someone to consent to the transfer.”

HHS May Have Different Response Than DOJ

Although hospitals may be able to make a sympathetic policy case to HHS for their noncompliance with Medicare policy on social admissions, it may not go over well with DOJ, “which has very different institutional considerations than HHS,” said former CMS legal officer Brenna Jenny, who is now an attorney at Sidley Austin LLP in Washington, D.C. “If someone at HHS were asked whether compliance were material to payment, they could have a very different response than a prosecutor at DOJ.” Jenny suggested that provider defendants in False Claims Act investigations make sure HHS’s views on complex billing regulations are considered by DOJ.

Even if DOJ agreed there are policy reasons to exercise enforcement discretion and decline to intervene in an FCA case, providers may have to contend with the whistleblower lawsuit if the relator continued to litigate after DOJ bowed out, she noted. “There’s a real danger in not complying even if the government exercises enforcement discretion in your favor because relators drive the lion’s share of false claims cases,” Jenny said.

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