

## Report on Medicare Compliance Volume 27, Number 29. August 20, 2018 Prime Healthcare, CEO Settle FCA Case for \$65M Over Admissions; Accountability Expands

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By Nina Youngstrom

After Prime Healthcare Services in California bought Alvarado Hospital in 2010, Karin Berntsen, who was the director of case management, watched as it became a place where insured patients allegedly were admitted as inpatients whether or not it was medically necessary, with emergency room physicians pressured to admit them and avoid the use of observation. Alarmed by the alleged noncompliance, Berntsen became a whistleblower, wearing a wire to meetings with hospital executives to gather evidence for the Department of Justice (DOJ), according to her attorney, Marlan Wilbanks. DOJ intervened in her false claims lawsuit, and on Aug. 3, Prime Healthcare Services Inc. and its founder/CEO, cardiologist Prem Reddy, M.D.; Prime Healthcare Foundation Inc.; and Prime Healthcare Management Inc. agreed to pay \$65 million to settle allegations that 10 Prime hospitals admitted patients who could have been treated in observation or another outpatient setting from 2006 to 2013, DOJ said.

Reddy has to personally pay \$3.25 million of the settlement amount. Prime and Reddy did not admit liability in the settlement.

The case represents a core compliance challenge for hospitals—decisions about patient-status—and the use of the Yates Memo, formally known as the Individual Accountability Policy, which is DOJ’s policy of pursuing culpable individuals in corporate fraud cases.

“It’s an important piece of the puzzle for this case,” Wilbanks says. Naming Reddy as an individual and not just the founder or officer of the company and requiring him to pay millions of dollars “sends a strong message the government will follow up when they find strong evidence that the allegations of fraud are true,” he contends. Some of the evidence was gathered from Berntsen wearing the recording device to meetings with executives, which short-circuited a “he said, she said” situation “where they could deny the things she was hearing with her own ears,” Wilbanks says. Berntsen would inform DOJ attorneys of upcoming meetings and their agendas, and if they seemed like they would benefit the case, the FBI arranged for her to wear the wire, Wilbanks said. That’s uncommon in whistleblower cases, but not unheard of, he noted.

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