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False Claims Suit: Hospital Billed for ASC Services at Higher Hospital Rates

Whistleblower case alleges that hospital and ASC conspired to ensure higher reimbursement rates.

The physician-owners of a surgery center in Princeton, Ind., pressured the hospital a half block away to bill its services as though the hospital provided them, according to a false claims lawsuit filed by the hospital's former chief financial officer. For more than 5 years, Medicare paid the hospital for the ASC's services at the hospital's rate instead of at the ASC's lower rate, and the two split hundreds of thousands of dollars in ill-gotten gains — 15% for Gibson General Hospital and 85% for the Princeton Surgery Center, says the suit.

The lawsuit suggests that the hospital and the ASC were motivated by greed: The physician-owners wanted to maintain their profit margins, and hospital officials wanted to maintain their referral relationship with the doctors. It also points to the disparity in Medicare reimbursements between hospitals and ASCs. As a critical access hospital, Gibson General was reimbursed by Medicare at a substantially higher rate than the ASC for the same services.

Here's how the fraudulent billing scheme worked, according to the suit. For nearly 2 years, the hospital submitted to Medicare about 65 false claims per month, each claim averaging \$6,000.

If the ASC had billed for its own services, Medicare would have paid about \$1,500 per claim. With the hospital billing at its critical access rate for the ASC's services, Medicare paid an interim payment of about \$2,280 and a final settlement amount of \$1,320 for a total of \$3,600 per false claim. Medicare lost \$2,100 for each false claim. The UBO4 forms the hospital submitted for services rendered by the ASC show the hospital's provider and tax ID numbers, not the ASC's.

At first, the hospital billed all of the surgery center's private-pay and commercially insured patients. This went on from April 2005 until November 2007, when the hospital began billing all of the ASC's services — Medicare/Medicaid billing as well as private and third-party payors, according to the suit

The suit, citing the U.S. False Claims Act, was filed in September 2009 by Evansville attorney Lane Siesky on behalf of Gregory Schulten, Gibson General's former CFO. The whistleblower case was recently unsealed. In the suit, Mr. Schulten says he complained to hospital officials that the billing was "fraudulent and illegal." The complaint says Mr. Schulten was discriminated against for making the complaints and fired last June because he "didn't get along with people." Mr. Schulten seeks fines against the defendants, reinstatement to his job, double backpay with interest and other damages and costs.

Mr. Siesky declined to comment on the case. Ophthalmologist Wagih Satar, MD, the medical director and CEO of the surgery center, declined comment other than to say that "our legal counsel is reviewing [the lawsuit] to take the appropriate actions and that we are taking the matter very seriously." A hospital spokesperson didn't return a call seeking comment.

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If the allegations in the suit are true, the ASC and the hospital violated the Stark Law and the Anti-Kickback Statute. The Stark Law prohibits a hospital from submitting Medicare claims for payment based on patient referrals from physicians having a financial relationship with the hospital. The Anti-Kickback Statute prohibits any person or entity from making or accepting payment to induce or reward any person for referrals for federally funded medical services.

Besides being two-tenths of a mile from each other, the hospital and the ASC had a close relationship — even though, according to the suit, the hospital has no ownership interest in the ASC. The hospital derived a large portion of its patient referrals from the physician-owners named as defendants. In addition to having an ownership interest in the ASC, Dr. Satar, internist Ramesh Patel, MD, and M.S. Krishna, MD, a doctor specializing in pediatric and adolescent medicine, served on the hospital's board of trustees.

Dan O'Connor

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