

MEDICARE COMPLIANCE

After Employee Letter and Self-Disclosure, Tenet Settles Rehab Case for \$42 Million

A chain of events that started with an employee letter to Tenet Healthcare Corp.'s CEO and led to a self-disclosure has ended in a \$42 million false claims settlement. The Department of Justice said April 10 that Tenet has resolved allegations that 25 inpatient rehabilitation units at its acute-care hospitals billed Medicare for patients who did not qualify for admission.

Tenet set the settlement in motion by disclosing the inpatient rehab overpayments to the HHS Office of Inspector General, as required by its corporate integrity agreement, which has since expired. OIG imposed a five-year CIA on Tenet in its 2006 settlement with DOJ for \$900 million. As part of negotiating its CIA, Tenet was authorized to use OIG's self-disclosure protocol, which offers the prospect of lesser penalties to providers that come forward with potential violations.

Shortly after signing the CIA, Tenet's CEO received a letter from an employee at one hospital's inpatient rehab unit, says Chief Compliance Officer Audrey Andrews. The employee questioned how the hospital assessed patients for admission to inpatient rehab, which pays more than regular hospital stays. The CEO immediately sent the letter to Andrews and within hours, "we opened an investigation," Andrews tells *RMC*. "We engaged an independent expert to compare our medical records to the [fiscal intermediary's] local coverage determination" for inpatient rehab, and put all claims on bill hold for the time being. Rehab experts from Tenet's corporate office in Dallas reviewed claims to ensure they were compliant before they were submitted. Andrews reported the problem to the independent monitor who kept tabs on Tenet's compliance under its CIA. "We put in place a rehab compliance review committee at that hospital that was overseen [by quality experts from Dallas]," she says, and "we met with individuals at the hospital to reinforce and educate."

Overpayments were identified at this hospital and it turned out that other Tenet hospitals had inpatient rehab compliance problems as well. They ran afoul of the same LCD because Tenet, as a hospital chain, is allowed to operate under a single MAC's jurisdiction.

So Tenet disclosed the issue under its CIA and entered the OIG self-disclosure protocol, which led to the settlement. The government alleges that from May 15, 2005, to Dec. 31, 2007, the inpatient rehab units billed Medicare for patient admissions when "the medical and/or rehabilitative needs of the patients did not meet the Medicare program's standards for IRF admission," the settlement states. Tenet has only eight inpatient rehab units now as part of its slimming down to 50 acute care hospitals.

This story may become more familiar now that all providers and suppliers must report and return overpayments within 60 days of identifying them. Tenet's CIA, for example, required the hospital chain to notify payers of overpayments within 30 days of identifying them and take remedial steps within 60 days. Providers that have survived CIAs may be well-versed in this process. "The 60-day Medicare refund mandate requires you to figure out the same sort of issues," says San Francisco attorney Judy Waltz, with Foley & Lardner LLP. When is the overpayment identified? What do you do if it can't be quantified in time to meet the deadline? What if an employee tells the compliance officer there's a problem that may be an overpayment but it isn't clear yet? Does the 60-day clock start ticking then? Who should the hospital approach to confirm information? What should the disclosure letter say? "There is a lot of work to be done in a relatively short period of time," she says. "It takes project management skills."

Waltz recommends establishing a process for overpayment returns. Assign a person to coordinate efforts and make sure everyone knows who it is. Figure out who will need to be consulted to quantify the overpayment, who can locate supporting medical documentation, and who will need to approve a disclosure and write the check. "There are a lot of moving parts in trying to figure out overpayments," she says.

Contact Andrews through Rick Black at rick.black@tenethealth.com and Waltz at jwaltz@foley.com. ✧