

# MEDICARE COMPLIANCE

## In Landmark Case, N.C. Hospital Resolves Criminal Allegations for Inpatient Stays

For the first time, a hospital faces criminal charges over outpatient services that were billed as inpatient stays. WakeMed Health and Hospitals, a Raleigh, N.C.-based health system, agreed to pay \$8 million in a global settlement that includes a deferred prosecution agreement, a civil settlement and corporate integrity agreement (CIA), the Department of Justice said Dec. 19.

If WakeMed complies with all terms of the agreement, DOJ will drop the criminal charges in two years. That allows WakeMed to escape exclusion from federal health programs, which is mandatory for most health care felony convictions but a death sentence for providers.

The criminal information, which is signed by the U.S. Attorney for the Eastern District of North Carolina, focuses on nonprofit WakeMed's Raleigh campus, including its Heart Center Observation Area (HCOA). The 41-bed HCOA was "designed to facilitate a high volume of cardiac treatments," the information alleged, and had no licensed inpatient beds. Physicians never planned for patients to stay overnight as inpatients, but WakeMed billed MS-DRGs for them anyway, the information alleged. Admission practices at the Raleigh campus were conducted at the direction of the director of patient access, "for which WakeMed is criminally liable," the information alleged.

The enforcement action against WakeMed is "very aggressive," says former federal prosecutor Richard Westling, with Waller Lansden in Nashville. And it's a reversal of the typical false claims scenario for incorrect setting, where physicians admit Medicare beneficiaries to inpatient beds when documentation supports lower-paying outpatient and/or observation services, he says. In the WakeMed case, physicians wrote orders for outpatient procedures, but case managers changed them to inpatient status or created orders where there weren't any, according to the criminal information. "The government clearly sees this as more egregious," Westling says. "While the treating physician was saying not to admit the patient, the hospital was admitting the patient anyway."

The case is also an example of how readily the government can identify alleged billing abuses with data mining, and it doesn't need a whistleblower for that, says San

Francisco attorney Judy Waltz, with Foley & Lardner LLP. A "proactive data analysis" of zero-day stays in North Carolina, which was conducted by CMS's program safeguard contractor (PSC), set in motion the chain of events that led to the investigation, according to the settlement.

An attorney representing WakeMed in the case had no comment. But in a statement, WakeMed emphasized that the settlement relates only to inpatient vs. outpatient billing from 2003 to 2010, and patient care was not affected. "All billed services were provided," and patients were not charged more, WakeMed said.

"WakeMed is one of the best hospital systems in the country and is an organization with great integrity. This settlement agreement is the result of billing errors made interpreting Medicare rules and regulations," commented Tom Oxholm, chair, WakeMed Board of Directors. "We take full responsibility for the mistakes and regret that errors were made."

In the wake of the billing errors, WakeMed said it invested in compliance, including training, revamping the admissions process, reviewing all claims prior to submission, and engaging additional independent auditors. It previously remitted \$1.2 million identified through internal audits, which will be deducted from the \$8 million settlement.

Here's how things went down, according to the information and global settlement. Physicians contacted WakeMed to schedule non-emergency cardiac procedures at its Raleigh location. WakeMed's patient access staff got preregistration information, such as patient demographics, insurance information and sometimes a physician outpatient order, and entered it into the hospital database. At that point, patient access staffers allegedly started in with the monkey business for Medicare beneficiaries. They were instructed to disregard or circumvent physician designations of status as "outpatient" on written orders. "False status designations flowed through to WakeMed's coding and billing departments, who relied upon the false electronic entries and methodically billed the visits as inpatient hospital stays despite the fact that the patients were neither expected to, nor did they, remain in the hospital overnight as an inpatient," the information says.

## MDs Failed to Write an Admit Order

Sometimes physicians who routinely did cardiac procedures at HCOA failed to write an admit order. They'd treat the patient first and write the order based on whether admission was necessary or the patient could go home. Notwithstanding the physician's decision, patient access staffers took matters into their own hands, allegedly admitting patients through the electronic database and printing a copy of the referring physician's standard orders for routine cardiac procedures, the information says. "Without any instruction, authorization or consultation with the referring physician, the patient access staff marked the box on the orders reflecting that the physician had ordered the patient to be admitted as an inpatient when in fact no such order had been given," according to the information.

As a result, WakeMed collected several million dollars in overpayments because outpatient services were billed as if they were provided in the more expensive inpatient setting, the information alleged.

The investigation has its origin in a 2007 data run by Cahaba Safeguard Administrators, a PSC, which are the CMS fraud and abuse hunters now known as zone program integrity contractors (ZPICs). After comparing billed MS-DRGs to expected lengths of stay, Cahaba found that WakeMed had more zero-day stays than anyone else in the state, which meant inpatients were discharged in fewer than 24 hours. As a result, Cahaba audited WakeMed's Medicare claims for zero-day stays from Oct. 1, 2003, to Sept. 30, 2006, and found that many of the patients who came for cardiac procedures and went home the same day were billed as inpatients. To find out why, Cahaba visited WakeMed in late 2007, according to the global settlement.

## Importance of MD Orders Was Highlighted

Although WakeMed provided policies and procedures on registration, patient status and "scope of service," which explained the role of the patient access department, "Cahaba was unable to reconcile WakeMed's statements regarding its admission and billing procedures with the medical records and other data obtained from WakeMed and physician practices relating to the sample of patients at issue," the settlement states. The PSC referred the case to the Office of Inspector General (OIG), which subpoenaed additional records, interviewed WakeMed employees and reviewed billing alongside the U.S. attorney's office. That eventually culminated in the global settlement.

"OIG and DOJ are making several points with the case," Waltz notes. In addition to showcasing the power of data mining, "they are really emphasizing the importance of the physician order." Hospitals may mingle inpatient and outpatient beds and some physicians give little thought to billing distinctions because their head is in the clinical game, which raises the stakes for the integrity of the order, Waltz says. "Hospitals have gone to InterQual criteria because that will tell you what is expected in terms of inpatient or outpatient status, but at the end of the day, doctors' orders as to how patient care should be provided are still important even when using InterQual or similar software," she says.

Key aspects of the global resolution are WakeMed's ongoing compliance obligations and its five-year CIA, which require the engagement of external auditors and an independent review organization. Here are a few highlights, some of which were initiated by WakeMed after the investigation began:

◆ *The compliance committee will become a separate, board-level committee instead of a subcommittee of the audit committee.* "Dividing compliance and audit committees is a best practice," Westling says. "It has to do with the skill set you want" on the respective committees. Audit people have balance-sheet experience, for example, while increasingly compliance committees need a clinical person, he notes.

◆ *WakeMed must change its structure so the compliance officer reports directly to the CEO and board.* That is a no-brainer for many hospitals. "The government continues to believe it is ill-advised for a compliance officer to report to the CFO or the general counsel," Waltz says. But "many organizations still haven't gotten there," Westling adds.

◆ *WakeMed is explicitly forbidden from making public statements* (e.g., press releases, media interviews) denying the responsibility of its directors, officers, employees and agents for the conduct and for the "statement of facts" in the global settlement.

◆ *There are new procedures to prevent the kind of abuses alleged in the settlement.* For example, the independent review organization will conduct an annual "inpatient medical necessity and appropriateness review" as part of the CIA.

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