

Recent Case Shows That Providers Must Pay Attention to Concerns About Fraud Raised by Employees

Two former Amedisys employees claim that they were fired in retaliation for alerting management to possible violations of the federal False Claims Act. They then filed a whistleblower, or qui tam, lawsuit [*Pilat v. Amedisys, Inc.*, No. 23-566 (2d Cir. Jan. 17, 2024)]. In their whistleblower suit, the employees claim that they complained internally to supervisors about suspected fraudulent practices and refused to engage in such practices.

The employees, for example, recommended against recertifying patients, but supervisors overruled the recommendations and recertified patients again. One of the employees then refused instructions from his supervisors to recertify the patient yet again. The employee said that the patient was completely independent and it would be “unethical” to do so.

The employees also expressed concern to supervisors about the inability of nurses and therapists to keep up with a large volume of patients. One employee said he had to schedule visits for three times as many patients as was safe. The employees explained that many patients were seen for only a few minutes rather than an appropriate amount of time. The employees said that one nurse was assigned to make eighty-six visits during one week and another was assigned to make seventy-eight visits. Amedisys billed for the visits anyway.

In addition, former employees identified multiple specific instances in which clinicians were instructed to document false information about patients. The false documentation was then used to support treatments for which patients did not qualify or to recommend unnecessary treatments. Supervisors, for example, instructed employees to fraudulently document that a fifty-year-old man whom an employee was treating was not independent and needed assistance to climb stairs. The patient did not need such assistance.

The employees further claimed that a female patient in her late fifties with early onset Parkinson’s disease received services during an episode of care. The severity of her condition was overstated in order to continue treatment.

Perhaps the most vivid example provided by the employees involved a female patient who was approximately seventy years old who had a neurological disorder that limited her mobility. The patient’s condition did not prevent her from leaving home or from driving. Supervisors repeatedly overruled employees’ recommendations to reduce visits even though she was completely independent and it would be “unethical” to provide more

intensive treatment. The employees were also told not to document a leg injury that the patient suffered in a car accident because documentation of the accident would make it clear that she was not actually homebound and that she did not meet eligibility requirements of the Medicare Program.

Providers must take seriously employees' concerns regarding possible fraudulent and abusive practices. Most whistleblowers take their concerns to their employers first. It is only when employers ignore their concerns or, even worse, retaliate against employees for raising issues in the first place, that employees turn to outside enforcers for assistance in pursuing their concerns. Whether or not the allegations of employees are valid, providers must take them seriously. Thorough investigations are required in order to demonstrate to employees that there is no problem or that the problem has been corrected.

Although this case involves home health services, the message applies to all types of providers. The message from this case and numerous other lawsuits is clear: Don't shoot the proverbial messenger who brings information about possible fraud and abuse violations. There is a very heavy price to be paid.

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