

Qui Tam Lawsuits: Compliance Programs Can Reduce Likelihood of False Claims Lawsuits

The following story is based upon a lawsuit we handled involving an outpatient rehab clinic as well as numerous discussions with the US Attorneys' office and the NJ Medicaid Fraud Unit. I've modified the story to take place in a nursing home because the lessons are transferrable.

A physical therapist worked for Moosehead Physical Therapy*. Moosehead Physical Therapy had a contract to provide inpatient rehab for Beavertail Nursing Home*. The physical therapist alleged that Moosehead's Director often met with the physical therapist and demanded that she change her documentation in order to increase the billing code for certain services rendered to the residents. The physical therapist claimed that she always refused because she was aware that improper documentation could result in upcoding and improper payments for services rendered by the physical therapist. Moosehead's Director, of course, denied ever pressuring the physical therapist into falsifying her documentation. The Director correctly acknowledged that false documentation and upcoding would violate federal and NJ laws that required Moosehead to bill only for services actually provided. Eventually the Director fired the physical therapist.

The physical therapist sued Moosehead Physical Therapy for wrongful termination claiming that the Physical Therapy Director had fired her for refusing to falsify documentation that would have resulted in upcoding certain services rendered which, in turn, would have increased reimbursement. She also simultaneously filed a NJ False Claims Act lawsuit and a federal False Claims Act lawsuit against only Beavertail Nursing Home claiming that the nursing home had benefited from years worth of fraudulent upcoding and unlawful reimbursement.

The wrongful termination lawsuit settled; however the NJ False Claims Act and federal False Claims Act lawsuits still needed to be addressed. Beavertail found out about these lawsuits, even though they were under seal, during the employment lawsuit settlement negotiations. The US Attorneys' office and the NJ Medicaid Fraud Unit ultimately declined to "intervene" or "take on" these false claims lawsuits. Their primary reason was the fact that Beavertail Nursing Home had an effective compliance program.

A nursing home is ultimately responsible for everything that takes place in its rehab department including the quality of care provided and the billing for services rendered; however, very few nursing homes actually oversee what the rehab department does. A compliance program can provide real protection for a nursing home and still allow the rehab department to function somewhat autonomously.

The key to persuading federal and state fraud units to walk away from a false claims lawsuit brought against your nursing home by a resident, family member or employee, is to have an effective compliance program. Your compliance program must have the following basic components to be deemed effective:

1. You must designate a compliance officer and compliance committee;
2. You must have effective communication between your employees and upper management, including some sort anonymous reporting system, like an 800 telephone number, to report complaints.
3. You must create a system for maintaining complete and accurate medical record documentation.
4. You must conduct effective compliance training and education for staff.
5. You must require employees to promote and adhere to the elements of the compliance program as part of evaluating the performance of all employees.
6. You must enforce the compliance program standards through well-publicized disciplinary guidelines.
7. You must create an auditing and monitoring system. I strongly recommend that you insist that your rehab companies provide you a copy of their monthly internal audits as well as report on their audits during your quarterly QA meetings.
8. You must respond to detected offenses and develop corrective action plans.
9. You must periodically assess your compliance program.
10. You must have policies and procedures, including a statement of corporate philosophy and code of conduct.

For further information on how we can assist and guide you in developing an effective compliance program please [contact us](#).

Law Offices Of David S. Barmak, LLC

sfern@barmak.com

609 454 5351

609 454 5361 FAX

www.barmak.com