

Report on Medicare Compliance Volume 28, Number 41. November 18, 2019

Hospital Escaped Document Overload in 'Collaborative' FCA Resolution

By Nina Youngstrom

Although this is counterintuitive, it's in the best interest of health care organizations to give the government a helping hand during False Claims Act^[1] (FCA) investigations—and vice versa. That's the message from a prosecutor and an attorney who were on opposite sides of a Stark-related FCA case that was settled as efficiently as these things can be. The U.S. attorney's office tabled huge document production demands while the two sides hashed over allegations that compensation was not fair market value or commercially reasonable. With its limited resources, the Department of Justice (DOJ) also doesn't want to drown in documents, but it has to have faith in the credibility of the organization it's investigating.

"You should be trying to build trust with the government so communication can flow more freely," said Matthew Krueger, the U.S. Attorney for the Eastern District of Wisconsin. It depends on the circumstances, but he would rather have a phone call right away, "a really friendly phone call, not one that is rattling sabers and saying how outrageous the [Department of Justice] overreach is," he said Nov. 5 at the Health Care Compliance Association's Healthcare Enforcement Compliance Conference in Washington, D.C.

The opposing counsel, David Glaser, said the settlement wasn't a small sum, but there were various points when the U.S. attorney could have demanded documents and he held off, keeping costs and aggravation down on both sides of the table. "Much of the efficiency is in how many documents we had to gather and produce," explained Glaser, with Fredrikson & Byron in Minneapolis, at the conference. "There were times when they said, 'Hang on to the documents, but if you can explain to us how you did this, and put them someplace safe, and if we get convinced by talking to various people and reviewing a subset of [documents], we won't review all of them.'" That's significant, because producing documents is a major expense in three ways: retrieving, scanning and reviewing them, Glaser noted. This can run into the hundreds of thousands of dollars or more, depending on the magnitude of the case.

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