

## Report on Medicare Compliance Volume 29, Number 1. January 13, 2020

### Physicians Settle Locum Tenens FCA Case; Some Providers May Cut Corners in this Area

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By Nina Youngstrom

Two physicians who own San Diego Retina Associates have agreed to pay \$948,768 to settle false claims allegations that they billed Medicare for services as if they were provided by a locum tenens physician when the physician was actually an employee, the U.S. Attorney's Office for the Southern District of California said<sup>[1]</sup> Jan. 2.

According to the settlement, ophthalmologists Mark Smith, M.D., and Fane Robinson, M.D., submitted Medicare claims with the Q6 modifier for services provided by Henry Hudson, M.D., to patients of San Diego Retina Associates from July 1, 2014, through Dec. 31, 2014. The Q6 modifier is appended to HCPCS codes when services are performed by a locum tenens physician, who is a substitute physician briefly used by practices and hospitals when the regular physician is unavailable. But Hudson "was not a temporary, substitute or locum tenens physician," the U.S. attorney alleged. He was employed by San Diego Retina Associates, although not enrolled in Medicare.

The U.S. attorney also alleged that Smith and Robinson "misidentified the rendering physician" for services actually performed by Dr. Jessica Gomez from Sept. 1, 2018, through Oct. 2, 2018. The false claims lawsuit was set in motion by Atul Jain, M.D., a former partner in San Diego Retina Associates. Smith and Robinson didn't admit liability in the settlement.

San Francisco attorney Judy Waltz, who was not involved in the case, says some providers have not understood or fully complied with Medicare's locum tenens requirements. "People have to take the locum tenens provisions seriously," says Waltz, with Foley & Lardner. "It's not just a way to get around the enrollment provisions."

Hospitals and practices use locum tenens physicians to fill in for employed physicians during vacations, maternity leave, illnesses or when a physician quits and the hospital needs a substitute while recruiting a replacement. Practices and hospitals also might use locum tenens physicians for the wrong reasons, she says. For example, while they're waiting for Medicare to approve the enrollment applications of newly hired physicians, they might use locum tenens as substitutes because they can't bill Medicare for services provided by the new hires yet, Waltz says. "You don't have to do the 855 enrollment form and all the paperwork assuming the locum tenens is properly enrolled in Medicare." But that's not what Medicare intended them for. Another potentially inappropriate use: busy practices hire locum tenens physicians for new Saturday hours. "In some cases, it's not correct to say the doctor is unavailable," she says. Practices also can't park locum tenens in a practice indefinitely.

### Medicare: Sixty Day Max on Locum Tenens

CMS describes the requirements for billing locum tenens ("substitute") physicians in chapter one of the Medicare Claims Processing Manual.<sup>[2]</sup> For a maximum of 60 days, Medicare will pay the regular physician or medical group for services provided by the substitute physician or physical therapist (an addition from the 21st Century Cures Act<sup>[3]</sup>). The substitute physician assigns his or her Medicare payments to the regular physician or

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medical group (using enrollment form 855R), and the regular physician pays the substitute on a per diem or similar fee-for-time compensation arrangement.

In a statement, San Diego Retina Associates said it “is pleased to have reached a settlement that resolves alleged highly technical billing errors concerning the timing of claims submitted to insurer for services provided by fully licensed, fellowship-trained retina specialists. The alleged errors did not relate to or question patient care or the clinical qualifications of any [San Diego Retina Associates] provider. San Diego Retina Associates admitted no wrongdoing in connection with the settlement and looks forward to continuing its focus on providing high quality care to patients.”

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1 United States Attorney’s Office Southern District of California, “San Diego Eye Doctors Pay \$950,000 to Settle Medicare Billing Fraud Allegations,” January 2, 2020, <http://bit.ly/2QGzuNV>.

2 CMS, *Medicare Claims Processing Manual*, 1 § 30.2.11, <https://go.cms.gov/308tr7B>.

3 21st Century Cures Act, Pub. L. No. 114-255 (2016).

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