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False Claims Exposure In Credentialing And Peer Review

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The government has expanded its theory of false claims liability for quality related matters by alleging that a physician's lack of qualifications to perform certain surgical procedures should be considered false or fraudulent, regardless of the patient's outcome. The novelty of this argument is that the government is claiming a Hospital bears false claims exposure for failing to perform adequate credentialing and peer review.

Background

In *United States ex rel. Rogers v. Azmat*, the government intervened in a qui tam action in which the relator alleged that certain endovascular services provided to Medicare and Medicaid beneficiaries by a physician on the Hospital's Medical Staff constituted false claims because they were "worthless." The relator is a cath lab nurse formerly employed by Satilla Medical Center (Hospital), a defendant in the case. The allegations focus on Dr. Najam Azmat's (Physician) competence to perform endovascular procedures in the Hospital's cath lab and the protracted failure of the Hospital to address serious quality issues with the Physician's patient care.

The Physician was granted Medical Staff privileges at the Hospital in August 2005. Almost immediately, nurses in the Hospital's cath lab indicated the Physician lacked the necessary training, experience, and clinical ability to safely perform endovascular procedures. According to nursing staff, he did not have basic knowledge about which catheters to use and demonstrated poor technique. Several cath lab nurses immediately reported their concerns to the Hospital Chief Executive Officer, Chief Operating Officer, and cath lab medical director. They inquired as to whether the Physician actually had privileges to perform endovascular procedures. Neither the administration nor the Medical Staff pursued the complaints. By the end of 2005, the Physician had shown no improvement, ultimately resulting in his dissection of a patient's aorta in December 2005.

In response, all of the cath lab nurses stated they would no longer work with the Physician and/or expressed concern about doing so. The Hospital and Medical Staff still did not take action. According to the allegations, when the relator again questioned the Physician's competence in January 2006, she was summarily fired and, shortly thereafter, filed a qui tam action.

- In the complaint, the government alleges that the Hospital knew, recklessly ignored, or deliberately ignored:
- The Physician's complication rate in endovascular procedures was exceedingly high;
- The Physician's privileges at a prior hospital were restricted because of intraoperative and post operative complications;
- The Physician had three medical malpractice suits pending against him in another state;
- There were repeated complaints about the Physician's competence to safely perform endovascular procedures from the beginning of his practice in the Hospital; and
- The privileges initially granted to the Physician did not include privileges to perform endovascular procedures, but he was allowed to perform them for over 15 months.

Government's Theory

Because the Physician was not qualified, competent, or credentialed to perform endovascular procedures, the government alleges they were "worthless." While the government has applied the "worthless services" argument in false claims cases before, this is the first time they have done so focusing on the physician's credentials and the Hospital's failure to conduct meaningful peer review. The government argues that the Hospital knew or should have known that the Physician was not competent to provide endovascular services to Medicare and Medicaid patients and that it was responsible to address the Physician's lack of competence through the credentialing process or by taking corrective action via the Medical Staff Bylaws. By failing to do so, the Hospital knowingly allowed the Physician to provide worthless services to patients and then billed the Medicare and Medicaid programs for them. As a result, each such claim was a false or fraudulent claim. This case remains pending in the U.S. District Court for the Southern District of Georgia.

Take Aways

The Azmat case provides yet another strong incentive for hospitals to ensure that the Medical Staff credentialing and peer review processes are functioning and effectively addressing quality of care issues. Hospital and Medical Staff Leadership should take steps to ensure that:

- Medical Staff peer review committees regularly meet to evaluate quality issues;

- Candidates for privileges have the appropriate training, education and experience to exercise the privileges they request;
- All credible allegations of poor quality care are appropriately investigated; and
- Physicians practice only within the scope of their delineated privileges.

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