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# Hospital Settles Case for $7M; Whistleblower Says She Was Compliance 'Window Dressing'

When Linda Jainniney was hired as the manager of radiation oncology for AnMed Health Cancer Center in South Carolina in 2005, she was handed the compliance reins as well. Although she had no background in billing or compliance, it wasn't long before Jainniney sounded alarms about the alleged lack of physician supervision of radiation oncology procedures at the cancer center, which is part of AnMed Health, a hospital in Anderson. But they fell on deaf ears.

Seven years later, Jainniney became a whistleblower, alleging in a false claims lawsuit that AnMed routinely charged Medicare for radiation oncology procedures that weren't supervised by physicians. It became apparent that her compliance role was "essentially window dressing," Jainniney alleged in the complaint.

Now AnMed Health has agreed to pay $7 million to settle allegations that it violated the False Claims Act over physician supervision and evaluation and management (E/M) upcoding, the U.S. Attorney's Office for the Northern District of Georgia said Sept. 27. This is at least the third time a health care organization has entered into a recent multi-million-dollar settlement for alleged lack of physician supervision of radiology services.

According to the settlement, AnMed resolved allegations for:

◆ Submitting Medicare claims for radiation oncology procedures that required physician supervision even when radiation oncologists William V. Tomlinson, M.D., and Ravinder Malik, M.D., were not there to supervise them from Jan. 1, 2007, to Dec. 31, 2012.

◆ Billing Medicare for E/M services provided at a minor care clinic under emergency department (ED) codes (G0380 to G0384). "AnMed's Minor Care Facility did not meet the criteria to qualify as a Type B emergency department…but it nevertheless systematically billed Medicare at these higher rates," the U.S. attorney's office alleged.

◆ Submitting E/M claims for ED services as if they were provided by a physician when they were actually performed by mid-level practitioners (e.g., nurse practitioners) from Jan. 1, 2006, to Dec. 1, 2014.

AnMed, which did not admit liability, said in a statement "we are glad to report that the billing errors were largely technical and did not compromise the quality of the care delivered at AnMed Health."

In the complaint, Jainniney, the whistleblower, alleged the two radiation oncologists named in the settlement were not on campus at least 30% of the time that tests and therapy were administered. "Sometimes during the entire day, there was no radiation oncologist physician present," the complaint alleged.

Medicare regulations require direct supervision of most radiation oncology procedures, which means physicians must be immediately available to take over if patients need assistance.

The services provided included CPT Codes 77413 (linac complex 6-10), 77280 (simple simulation), 77418 (IMRT treatment delivery), 77421 (image-guided radio-

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**Managing Editor**
Nina Youngstrom
Nina.Youngstrom@hcca-info.org

therapy), 77334 (complex treatment device), 77414 (linac complex 11-19), 77014 (CT for radiation therapy planning), 77290 (complex simulations), 77404 (linac simple 11-19), 77331 (micro dosimetry) and 77417 (port film).

Jainniney raised her concerns about the lack of physician supervision to an AnMed compliance officer in a January 2006 email but was assured everything was OK, the complaint alleged. She continued to press the point to different executives, year after year, supporting her arguments with Medicare and industry materials. "However, in spite of Relator's efforts, nothing seemed to change," the complaint alleged. At one point, Jainniney's supervisor spoke with the physicians, and they said there was no problem with supervision. "Linda is exaggerating," they reportedly told him, according to the complaint.

The more Jainniney beat the compliance drum, the worse things got for her, the complaint alleged. "Defendant AnMed was seeking to muzzle her at best and create grounds to terminate or demote her. Relator received her 2011 annual review on October 20, 2011, and received a low score of 74, inexplicably down from 88 the year before in 2010 and a score of 90 in 2009," the complaint alleged.

Eventually Jainniney quit and filed the false claims complaint in 2012. In addition to the $7 million false claims settlement, AnMed settled a retaliation claim with Jainniney for $850,000, says her attorney, Raymond Moss, with Moss & Gilmore.

### Lawyer: Formal Reporting Process Is Essential

The AnMed settlement is a reminder of the importance of reporting channels in compliance programs, says former federal prosecutor Melissa Jampol, with Epstein Becker & Green in New York City. "You need a formal process for employees to make complaints that are handled objectively, decisively and through a formalized process with accountability" she says. "That's the message we are hearing out of the Department of Justice," which made that plain in its February guidance, Evaluation of Corporate Compliance Programs (*RMC 3/6/17, p. 1*), "as well as in recent statements by acting DOJ Criminal Fraud Section Chief Sandra Moser."

In a July 25 speech to ACI 8th Global Forum on Anti-Corruption in High Risk Markets, Moser urged corporations to invest in compliance, saying money is better spent on compliance now than on criminal fines later. "Empower your compliance executives by giving them their rightful seat at the table and listening to what they have to say, Moser said. "Don't put them in the awkward position of having to sit before the Department and defend a program that they fought to make better and were denied the resources or backing to see through."

### AnMed Says It Has Improved Processes

In its statement on the settlement, AnMed noted that it learned through the investigation that some of its billing practices "fell short of our regulatory obligations. In response to the investigation, and in an effort to exceed the expectations of both our customers and regulatory authorities, we launched a thorough review of our processes and reported the results to the authorities.… We are glad to report that the billing errors were largely technical and did not compromise the quality of the care delivered at AnMed Health. We also were pleased that neither our review, nor that of the OIG, revealed any intentional misconduct or criminal wrongdoing. Our review revealed opportunities to improve billing practices in a very small percentage of AnMed Health's Medicare claims, but these opportunities are important for our regulatory compliance. We have taken actions to correct all affected processes, including the way we keep records and bill for technical services."

AnMed also got rid of a vendor that provided certain billing and coding services and has beefed up compliance and audit functions "to help prevent future errors and ensure that if errors take place in the future, we will be the first to discover them."

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The AnMed settlement comes on the heels of other radiation oncology cases. For example, on May 9, the U.S. Attorney's Office for the Central District of California said Valley Tumor Medical Group in Lancaster, Calif., paid $3 million to settle false claims allegations that it billed Medicare, Medi-Cal and TRICARE over almost a decade for unsupervised radiation oncology services.

The U.S. attorney's office alleged that from Jan. 3, 2006, to Nov. 13, 2015, Valley Tumor's radiation therapists administered radiation oncology treatments to patients at the Ridgecrest location when no doctor was on-site, as required by federal regulations. The lawsuit was initiated by a former employee who became a whistleblower.

In 2015, Adventist Health System Sunbelt Healthcare Corporation agreed to pay $5.4 million to settle false claims allegations that it provided radiation oncology services that were not directly supervised by radiation oncologists or other qualified people, the Department of Justice and U.S. Attorney's Office for the Middle District of Florida said (*RMC 3/23/15, p. 5*).

Contact Jampol at mjampol@ebglaw.com. Visit http://tinyurl.com/yam54fnw. ✧