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Protecting Taxpayer Dollars and Public Safety: Understanding Whistleblower Law and Healthcare

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The U.S. General Accounting Office has identified an alarming statistic: In 2013 alone, approximately \$50 billion in taxpayer dollars was lost to waste and fraud in healthcare – up from \$5 billion in 2012. In my specialty of institutional healthcare litigation, we have uncovered significant fraud, which not only affects taxpayers but also the public health.

Consumers and employees who report fraud, known as Whistleblowers, are serving and protecting their fellow taxpayers, and they are protected by law. Whistleblower laws date back to Abraham Lincoln's administration, when the original intent was to protect the government from contractors who would overcharge for services paid for by taxpayers. We all remember the \$600 hammers of many years ago, and the same problem runs rampant in the healthcare industry.

Exploitation of the Minimum Data Set (MDS). The MDS is a comprehensive assessment of a nursing home resident. It is a certified legal document that is the foundation for the plan of care. It is also the way nursing homes are paid for services provided. We have uncovered situations where nurses called MDS Coordinators are faced with pressure from owners to up sell or overcharge for services to patients who either don't receive those services or don't need them. We have found significant discrepancies between the true condition of the resident and an overstatement of their needs on this MDS form. By overstating the needs of residents, nursing homes are able to significantly and fraudulently increase their payments from the government.

Placing Non-Employed Family Members on the Payroll. Historically, nursing homes have listed the number of their employees, their salaries and reported hours in a document known as a Cost Report. We have uncovered situations where employee family members were listed on the payroll but not actually employed. By listing certain types of employees, such as administrators, assistant administrators and controllers, nursing homes were fraudulently boosting their Medicaid payments.

Artificially Inflating Rental Charges. The owners of some nursing homes own the business and the real estate on which the nursing home operates, and in some cases they pay themselves rent or overcharge themselves rent. In one case, we found a year's worth of rent actually exceeding the total value of the property. Over the years, nursing homes are able to make tremendous profit by taking advantage of an under-resourced government, which simply cannot keep track of fair market value for every nursing home property in the country.

Never Events in Hospitals. In 2008, the federal government came to support a category of medical failure known as Never Events.

Never Events are occurrences that the Centers for Medicare and Medicaid have said should never happen in hospitals, and they won't pay for them. These events include leaving foreign objects in a person's body after surgery, amputating a wrong limb, falls with injuries, and hospital-acquired Stage 3 and Stage 4 pressure ulcers — commonly known as bedsores. Hospitals are not allowed to bill Medicare to fix these problems, and in many circumstances hospitals still bill for these injuries even though they are not allowed to.

Know your Rights. Though most nursing homes and hospitals provide excellent care with appropriate billing, studies have confirmed that there are exceptions. These exceptions sap the resources of good healthcare.

As noted above, whistleblowers are important components of the government's role in preventing and eliminating fraud. Whistleblowers are protected by New Jersey and federal laws from retaliation. Under certain circumstances receive a relator payment from the federal government for turning in such fraudulent conduct. That is, they get a percentage of the money they help the government recover. Any whistleblower, such as an MDS coordinator, who is aware of fraud, can and should reach out for help in reporting this to the government and can obtain counsel to guide them through this process.

In the end, whistleblowers have already saved billions dollars for the government for healthcare fraud.

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