



Labor Relations WEEK™

April 21, 2011
25 LRW 240

Health Care Employees

Hospital Chain Alleges Union Extortion As SEIU Study Exposes High Infection Rates

Prime Healthcare Services Inc. (PHS), owner of 14 acute care hospitals in California, is speaking out against what it says is an extortion campaign by the Service Employees International Union-United Healthcare Workers West alleging Medicare fraud or infection control problems by the hospital chain during an ongoing labor dispute.

PHS has denied the conclusions of an SEIU study that showed abnormally high rates of septicemia blood infection at PHS hospitals, dismissing the findings as “propaganda” based on a “bogus study.” In a Feb. 1 statement, PHS said SEIU-UHW relied on the manipulation of data to arrive at its own desired results.

SEIU-UHW's suggestion that the Ontario, Calif.-based hospital chain is committing Medicare fraud and PHS's denial of the accusation as a smear campaign have reached a high-pitched intensity, based on media watch group coverage, state and federal legislators' calls for agency investigations, and PHS's accusations of criminal violations by SEIU.

PHS maintains that its refusal to accept certain labor contract demands by the union and a neutrality organizing agreement at all of its hospitals is at the root of the issue. Meanwhile, SEIU said PHS's poor treatment of its employees also extends to poor treatment of its patients.

Two Possible Explanations, SEIU Says

In spring 2010, SEIU issued a report based on a computer analysis of medical records of Medicare patients with septicemia, a life-threatening blood infection, at more than 2,900 U.S. hospitals in 2008. The report showed the rate of septicemia among PHS's Medicare patients in 2008 was more than three times the national average and far exceeded any other U.S. health system.

The septicemia rate at every PHS hospital at least doubled from 2004 to 2008, according to the SEIU-UHW study. The figures show five of the six hospitals with the nation's highest rates of septicemia in 2008 were hospitals operated by PHS.

SEIU-UHW offered two possible explanations. Either infection rates were high because of low quality of care at the hospital or because the hospitals were diagnosing cases of septicemia to get higher Medicare reimbursement rates than they would with other types of infection, according to SEIU-UHW.

The union suggested that PHS could have a systemwide pattern of “up-coding,” a practice that might have led to \$18 million in excess Medicare payments in 2008, or the hospitals could have an infection crisis as the result of either poor quality of care in the hospitals or a high rate of infection among patients coming in from nearby communities.

“I can't think of an explanation for all the issues going on except runaway aggressive billing of Medicare,” Adam Weisberg, author of the study, told BNA Feb. 4. Weisberg, who conducts health care research for SEIU, said his study of national hospital figures found metrics at PHS hospitals “that stood out like a sore thumb.”

PHS, the largest for-profit hospital chain in California, maintains that its hospitals have a higher rate of septicemia because the hospitals see sicker patients as a result of an “emphasis on emergency departments, strict compliance with Medicare coding guidelines, and the early detection, and treatment of septicemia so as to improve patient care outcomes.” The septicemia cases are present on admission, not acquired at PHS-operated hospitals, the company said.

Underlying Labor Dispute

At the beginning of the SEIU-UHW study, the union provided a background description of its labor dispute with PHS, alleging anti-worker and anti-labor policies that have produced “a terrible record of callous treatment of workers' rights and community needs.” SEIU-UHW said it has proceeded to interest arbitration, to district court, and to bankruptcy court in its battle with PHS. The union said it also has filed unfair labor practice charges with the National Labor Relations Board against the hospitals, where the employer has reduced the workforce, cut wages and benefits, and “attacked worker protections.”

Attempting to demonstrate evidence that SEIU-UHW's claims are false, PHS issued a response to SEIU's report in October. In the introduction, PHS said its labor disputes with SEIU-UHW are at the heart of the union's accusations about septicemia.

SEIU-UHW represents 1,350 employees at four of PHS's 14 hospitals, including respiratory therapists, radiology technicians, housekeepers, and dieticians, but not registered nurses. The California Nurses Association, United Nurses Associations of California, and SEIU 121RN represent other PHS employees. In total, more than 3,000 PHS employees are represented by a union. All of the unions are in the process of negotiating replacements for contracts that have expired or soon will expire.

PHS acquired nearly all of its hospitals since 2002 and has not previously negotiated with the unions, according to SEIU-UHW.

Legislators Call for Agency Investigations

The SEIU report and an investigative report on the issue in October by California Watch, an initiative of the nonpartisan Center for Investigative Reporting, prompted federal and state legislators to call for investigations.

SEIU-UHW's report spurred Rep. Pete Stark (D-Calif.) and Rep. Henry Waxman (D-Calif.) jointly to write July 1, 2010, to Daniel R. Levinson, inspector general of the Department of Health and Human Services, asking that the agency examine the report and if the information was confirmed, to investigate the issue.

Donald White, spokesman for HHS, Feb. 8 declined to comment, however, on whether an investigation has taken place. "As a matter of standard procedure, the Office of the Inspector General can neither confirm nor deny investigations that may—or may not—be pending before the agency," he said.

Meanwhile, investigations are under way in California. Both California Sen. Elaine Alquist (D), chairwoman on the state Senate Committee on Health, and California Rep. William Monning (D), who chairs the Assembly Committee on Health, issued requests Aug. 17 and Sept. 8, respectively, for an investigation of PHS hospitals' septicemia rates to the licensing and certification office of the California Department of Public Health (CDPH). They also requested that the agency investigate PHS and withhold approval of any additional facility licenses for PHS or entities related to PHS.

Mark Horton, CDPH director, Nov. 24 wrote to Alquist that the agency planned a joint investigation with the Department of Health Care Services, Audits and Investigations Unit into the allegations of high septicemia rates at PHS hospitals. Horton said no decision would be made on any PHS applications for change of ownership until all investigations were concluded.

Accreditation Surveys by Public, Independent Agencies

The state agency has conducted patient safety licensing surveys at all PHS facilities addressing statutes that include compliance with immunization requirements, infection control, discharge planning, charitable care policies, and other patient safety and licensing requirements.

Of the 11 surveys that have been completed of PHS hospitals, 76 deficiencies were found, Pam Dickfoss, acting deputy director of CDPH Center for Health Care Quality, said in a Feb. 7 statement. Two surveys are still in the process of being completed. CDPH will not have a detailed analysis of the deficiencies, such as whether any of them had to do with infection control, until after the agency has completed all 13 surveys.

Any time a deficiency is issued to a hospital, the hospital is required to submit a plan of correction that outlines how the facility will correct the issue, a spokesman for CDPH said. The agency then follows up with the facility to make sure the plan of correction is fully implemented.

Two private accreditation agencies, Healthcare Facilities Accreditation Program (HFAP) and the Joint Commission, also surveyed PHS's Paradise Valley Hospital in National City, Shasta Regional Medical Center in Redding, and Chino Valley Medical Center in Chino. In November and December, those agencies deemed the hospitals in compliance with Medicare conditions and recommended the hospitals for continued Medicare certification to the Centers for Medicare and Medicaid Services (CMS).

The Joint Commission and HFAP are independent organizations authorized by CMS to survey hospitals, clinical laboratories, and other health care facilities for compliance with CMS standards.

A difference between the accreditation surveys conducted by CDPH and those conducted by independent organizations is that the public agency process is more drawn out and creates a public record if corrections are needed. If an independent agency finds a deficiency, the health care organization can correct it without a public record that it existed. Both the public agency and independent agency surveys have equal weight for accreditation.

The California Bureau of Medi-Cal Fraud and Elder Abuse confirmed it is looking into allegations of financial irregularities by PHS, an office spokesman said Feb. 8.

Meanwhile, in a November 2010 letter on behalf of PHS to the U.S. Attorney's Office for the Central District of California, Russell Hayman of McDermott Will & Emery law firm wrote to report threats by the union against PHS that he said violate certain federal criminal statutes. Hayman said SEIU-UHW designed the threats to extort concessions from PHS that would cause PHS executives to be prosecuted for Medicare fraud if the hospital chain would not accede to union demands.

Declining to comment about the PHS claims, a public affairs officer for the U.S. Attorney's Office Feb. 7 said, "Our policy is not to publicly discuss citizen complaints, referrals, requests for investigations, etc. On top of that, the Department of Justice has what is essentially a neither-confirm-nor-deny policy in relation to investigations."

Collective Bargaining, Petitions for Elections

As for collective bargaining between the parties, the SEIU-UHW collective bargaining agreement at Centinela Hospital Medical Center in Inglewood covering 675 employees expired Dec. 31, 2009. The parties bargained until December 2010 but have not reached agreement on a new contract. Reneé Sebeny, an SEIU-UHW spokeswoman, told BNA Feb. 8 that PHS declared impasse on the single issue of health care premiums and effective Jan. 1 imposed changes that require employees with HMO coverage to contribute to health care premiums for the first time at a rate of \$505 per month.

Sebeny said the union has filed unfair labor practice charges against the company on the issue.

SEIU-UHW and PHS bargained until January for renewal of the collective bargaining agreement covering 150 employees at Shasta Regional Medical Center in Redding. PHS has withdrawn recognition of the union, claiming that a majority of workers no longer supports the union, but it has not presented proof to endorse its position, Sebeny said. The union also has filed ULP charges in that case.

Labor contracts covering 335 employees at Garden Grove Hospital and Medical Center in Garden Grove and 191 employees at Encino Hospital Medical Center in Encino expire March 31. The parties are engaged in collective bargaining, but Sebeny reported that little progress has been made. She said the employer has refused almost all union proposals and has itself proposed all take-aways, such as elimination of the joint patient care committee and removal of severance pay provisions.

Meanwhile, the National Union of Healthcare Workers, a rival union, has filed election petitions to represent employees at Garden Grove and Centinela who SEIU-UHW currently represents, Sebeny said.

She added that PHS is “taking advantage of the elections to run a union-busting campaign,” has hired a labor-management law firm, and is holding mandatory captive audience meetings on union representation.

SEIU-UHW now plans to issue a new comparative study soon on malnutrition at U.S. hospitals that Weisberg said raises questions about other PHS practices.

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