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| REFERENCE-BASED PRICING NEWSLETTER |

Koehler Fitzgerald

Koehler Fitzgerald LLC provides highly specialized legal services to TPAs, HCSPs and Plan Sponsors offering reference-based medical plans.

Central to those services are the defense of balance billing claims, from provider billing to jury trial, utilizing the firm's highly rated trial lawyers, nationally recognized experts and affiliated local counsel throughout the U.S.

Koehler Fitzgerald's multilingual services are supported by the use of proprietary and customized software to track and support group calendaring, task management, contact management, conflicts checking, integrated document assembly and customized weekly reports of the status of claims and activity.

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Epic Systems False Claims Act Litigation

A whistleblower case filed in the U.S. District Court, Middle District of Florida,¹ against Epic Systems Corporation under the False Claims Act, 31 U.S.C. § 3729(a)(1)(A), has recently been unsealed. The False Claims Act is a federal statute which imposes liability on persons who defraud the federal government and its programs. The Act authorizes private individuals to file lawsuits on behalf of the government. Initially the cases are filed under seal with the Department of Justice being provided the opportunity to pursue the case in its own right. If the Department of Justice determines not to pursue the litigation, the plaintiff (called a relator) may pursue the claim.

The Epic Systems case was originally filed by Geraldine Petrowski in June 2015. On November 1, 2017, Judge James S. Moody, Jr. unsealed the complaint. Plaintiff says that she was employed by WakeMed Health from September 2008 to June 2014 and worked with the compliance team as a Compliance Review Specialist. From September 2012 to June 2014, Plaintiff alleges she was the Supervisor of Physician's Coding and served as the hospital liaison regarding Epic's implementation of its software at





Tenet Healthcare

Tenet Healthcare Corporation (NYSE: THC) reported a net loss from continuing operations of \$366 million or \$3.63 per diluted share. Same-hospital patient revenue decreased 2.3% and reflects a 2.2% decrease in adjusted admissions and a 0.2% decrease in revenue per adjusted admission. Tenet's 2017 outlook has been lowered to reflect a net loss from continuing operations of \$367 million.

Tenet operates hospitals in the U.S. and the U.K., an urgent care network, diagnostic imaging centers, surgery centers and satellite emergency departments.

Tenet's third quarter results were impacted by two hurricanes, unanticipated cuts in Medicaid in Florida and Texas and overall weakness in volume. Tenet reported that patient revenues in hospital operations and other segments declined 2.3 percent on a same-hospital basis in the third quarter of 2017 as compared with the third quarter of 2016, with admissions declining 2.6 percent, adjusted admissions declining 2.2 percent and net patient revenue per adjusted admission declining 0.2 percent.

Tenet says that it "has begun the implementation of an enterprise-wide cost reduction initiative – comprised primarily of headcount reductions and the renegotiation of contracts with suppliers and vendors – which is intended to lower annual operating expenses by \$150 million."

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WakeMed Health. She claims she was trained in Epic's billing systems and asserts that Epic's software permits "hospitals to set up their anesthesia billing modules to include the sum of the actual time, plus the base unit time [15 minutes] to be reported on the claim form." The purported result is over billing of Medicare and Medicaid for anesthesia services. The complaint cites as an example an invoice by MD Anderson Cancer Center for the removal of a prostate in June 2016. Allegedly, the provider billed for 420 minutes (28 units of CPT code 00865) or 7 hours, when the procedure summary indicated anesthesia was administered for only 4 hours and 49 minutes (19 billed units). The complaint alleges that Epic intentionally omitted to disclose the fact "that its software billed for base units and actual time of anesthesia used, ... influencing the fraudulent billing to Medicare and Medicaid."

Use of Epic billing software is widespread. The lawsuit says that Epic has 315 customers, including 69% of Stage 7 U.S. hospitals, 71% of Children's Hospitals and 83% of Stage 7 Clinics. The case seeks recovery of treble damages and \$10,000 for each false or fraudulent claim and demands a trial by jury.

Epic says that the Department of Justice, after its own expert review, determined not to pursue the case. Epic spokeswoman Meghan Roh said in a statement. "The plaintiff's assertions represent a fundamental misunderstanding of how claims software works."

¹Case No. 8:15CV1408T30EAJ.



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