

# Insights

## **Say What You Mean and Mean What You Say - Especially to the Feds**

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The recent settlement between Coffey Health System in Kansas and the U.S. government is a cautionary tale to other healthcare providers: false attestations related to government incentive programs could lead to False Claims Act liability.

Coffey Health System operates a 25-bed critical access hospital in Burlington, Kansas. It participated in the Electronic Health Records Incentive Program and received increased reimbursement from Medicare and Medicaid programs as a result. The government originally created the program to encourage healthcare providers to adopt certified electronic health records technology and then use that technology in a meaningful way. To participate in the Incentive Program, healthcare providers had to attest to meeting requirements related to the meaningful use of electronic health records technology.

One requirement healthcare providers had to attest to is that they implemented processes to identify, analyze, and resolve security risks to electronic health records. Coffey Health System attested that it performed and/or evaluated security risk analyses and continued submitting claims to Medicare and Medicaid for reimbursement for the 2012 and 2013 reporting periods. However, the government alleged those attestations were falsely made, resulting in a violation of the False Claims Act with respect to claims for reimbursement submitted following the allegedly false attestation. Coffey Health System settled the case with the government for \$250,000, a relatively small amount compared to potential liability under the False Claims Act which may be attributable to the small size of the hospital.

With this settlement action the U.S. government, has made clear it will hold healthcare providers accountable for false attestations resulting in the failure to protect the accuracy and security of electronic health records.

The action against Coffey Health System originated as a qui tam action filed by individual whistleblowers. As a result of the settlement, each whistleblower will receive \$50,000 from the settlement proceeds.

If you or your organization has any questions about this article or the False Claims Act, please contact Robert A. Anderson or Marc T. Quigley.