

# The Governance Institute

## Best Practices for Hospitals to Protect Against Whistleblower Lawsuits

In an increasingly aggressive environment for *qui tam* actions, there are many best practices that hospitals can follow to help protect against whistleblower lawsuits, such as:

1. Screen new hires carefully and incorporate adherence to the hospital's code of conduct into the expectations for every position.
2. The use of internal reporting procedures should be clearly defined and incorporated into employee evaluations. Supervisors and managers should be trained on how complaints and issues identified through those internal reporting procedures are to be addressed.
3. Supervisors and managers should respond promptly to troubled working relationships before employees become disgruntled and potential whistleblowers.
4. Employees should be reminded regularly of their duty to report illegal conduct, and annual performance evaluations should include certification that each employee has disclosed any illegal activity of which he or she is aware.
5. Departing employees should confirm that they have disclosed any misconduct during their exit interviews.

If a current or departing employee has reported potentially illegal conduct, the disclosure should be taken seriously and investigated formally. When employees see their concerns being addressed actively and responsibly by management, they are often less likely to become whistleblowers. Conversely, employees who feel their complaints have fallen on deaf ears are more likely to pursue a *qui tam* action if they feel it is the only way to get management's attention. Hospitals should consider involving legal counsel in the investigations and remain mindful of attorney-client privilege issues.

If an employee or other individual opts to pursue a *qui tam* action, the relator must file the case under seal and provide the government with a statement of material evidence. The government then has 60 days to investigate the relator's allegations and decide whether to intervene in the matter. This timeline, however, is frequently extended. During this period, the hospital may have no knowledge of a pending lawsuit, although the government's investigation may involve OIG subpoenas, Civil Investigative Demands, or even search warrants. The hospital's most important goal at this stage is to convince the government not to intervene in the matter. If the government decides to intervene, it will take over the case, though the relator could still participate. If the government declines, the relator may pursue the case as noted above, although at the relator's own expense. Any monetary recovery, however, will ultimately go to the government. Once the intervention decision is made, the case is unsealed and served on the defendant.