



Department of Justice Announces Health Care False Claims Act Settlements

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A False Claims Bulletin

The United States Department of Justice (DOJ) announced a number of False Claims Act health care settlements over the past several weeks. These settlements involved a wide array of allegations, including promotion of drugs for unapproved uses, payment of kickbacks, improper billing of outpatient services as inpatient services and provision of hospice services to ineligible individuals.

Promotion of Prescription Drugs for Unapproved Uses and Payment of Kickbacks

Johnson & Johnson (J&J) and its subsidiaries agreed to a settlement with the DOJ for more than \$2.2 billion to settle allegations that it promoted prescription drugs for unapproved uses and paid kickbacks to physicians and long-term care pharmacies. The settlement included criminal fines, forfeitures and civil settlements with the federal government and several states. The majority of the allegations against J&J concerned the drug Risperdal.

The government alleged that a J&J subsidiary marketed Risperdal for the treatment of anxiety and depression in elderly dementia patients, while it was approved only to treat schizophrenia. In addition, the government alleged that J&J caused false claims to be submitted to federal health care programs by promoting Risperdal for off-label uses, making false statements about the safety of Risperdal and paying kickbacks to physicians to prescribe Risperdal.

Finally, the government alleged that, in furtherance of its efforts to target elderly dementia patients, J&J paid kickbacks to Omnicare, Inc., the nation's largest pharmacy specializing in dispensing drugs to nursing home patients. The alleged kickbacks were paid as market-share rebates, data purchase agreements, grants and educational funding. This was one of the largest health care fraud settlements in U.S. history.

Improper Billing of Outpatient Services as Inpatient Services

The DOJ announced a settlement with SSM Health Care of Oklahoma, Inc. (SSM) in the amount of \$475,000 to settle allegations that the hospital violated the False Claims Act by billing Medicare for inpatient services that should have been billed as outpatient services. The government alleged that individuals who presented to the emergency room and patients who were scheduled for planned medical procedures were admitted to the hospital, and the services were billed on an inpatient basis when they should have been billed on an outpatient basis.

Provision of Hospice Services to Ineligible Individuals

Hospice of the Comforter Inc. (HOTCI) agreed to a settlement with the DOJ for \$3 million to resolve allegations that it violated the False Claims Act by submitting false claims to Medicare for hospice services provided to patients who were not eligible for such services. The Medicare hospice program is intended to provide care to terminally ill individuals during the last six months of their lives.

The government alleged that HOTCI directed its staff to admit all referred patients, regardless of whether they were eligible for the Medicare hospice benefit.

In addition, HOTCI allegedly falsified medical records to make it appear that the individuals were eligible for the hospice benefit, employed field nurses without hospice training, established procedures to limit physicians' roles in assessing whether patients were terminally ill and delayed discharging other patients when they became ineligible for the benefit.

In addition to the \$3 million settlement, HOTCI's former CEO agreed to a three-year exclusion from federal health care programs. The allegations arose from a lawsuit filed by a former HOTCI employee under the False Claims Act's whistleblower provisions.

Recommendations

Health care fraud will continue to be aggressively pursued by the DOJ and Department of Health and Human Services via the agencies' Health Care Fraud Prevention and Enforcement Action Team. Health care organizations should continue to strengthen their internal compliance programs and foster a culture of compliance throughout every department. Employees should be encouraged to bring potential issues to the attention of management so that the issues can be investigated and, if warranted, corrected and self-reported to the government.

Authors
