Client Alert: Telemedicine Fraud – Enforcement Trends

A Priority Telehealth Update: Telemedicine Fraud: Enforcement Trends

According to the Office of Health Policy, the number of Medicare beneficiary telehealth visits increased from approximately 840,000 in 2019 to nearly 52.7 million in 2020. Unfortunately, this seismic shift to telemedicine in a very short span of time also opened the door to new opportunistic form of fraud and abuse. To date, the Department of Justice (DOJ) has limited its enforcement actions to the most egregious offenders operating in the telehealth space. DOJ prosecutions of telemedicine providers have encompassed large scale schemes relating to telehealth upcoding, medically unnecessary prescribing, lab testing, unneeded durable medical equipment (DME) orders, falsified patient visits, as well as a variety of kickback arrangements.

Several cases stand out for their magnitude and audacity. Last February, Kelly Wolfe, a Florida businesswoman, entered a plea deal to resolve criminal and civil allegations relating to her involvement in more than $400 million in false claims for DME. When submitting claims for government reimbursement, Wolfe and her co-conspirators said that the high volume of medical equipment orders was due to increased telehealth provider-patient interactions, when in reality no such telehealth interactions had ever taken place. A similar high-volume case involving DME is being tried in New Jersey. Jean Wilson, a nurse practitioner and the purported owner of two telemedicine companies, is accused of committing over $137 million in healthcare fraud related to unnecessary orders for orthotic braces and prescription pain creams.

Unlawful lab testing arrangements are also being targeted by the DOJ. Two major cases involving medically unnecessary diagnostic testing are currently being prosecuted in Louisiana. Jamie McNamara was charged for his involvement in a scheme to defraud Medicare of over $174 million by billing for cancer and cardiovascular genetic tests that were medically unnecessary. Christopher Thigpent was charged in a similar scheme involving urine drug testing and genetic testing that is alleged to have defrauded Medicare of $54 million.

The pandemic also created opportunities for telemarketers to “harvest” or recruit patients who did not need care for telemedical treatments. Luis Lacerda was charged for his role in a telehealth fraud scheme involving $54.3 million in Medicare payments. Lacerda used his call centers to target Medicare beneficiaries and encourage them to accept expensive prescription medications that they neither wanted nor needed for any medical purpose. Lacerda then offered kickbacks and bribes to telemedicine companies to obtain signed prescriptions from physicians who had no interactions with patients, without reference to medical necessity.

To this point, government enforcement has been overwhelmingly focused on the most egregious, overwhelmingly criminal telehealth fraud. But providers should be mindful that future enforcement will inevitably expand into “grayer” territory with more subtlety in which the focus will be on reckless disregard of billing standards that does not rise to the level of egregious criminality. While the federal government has demonstrated an affinity for blockbuster, well-constructed criminal prosecutions against larger healthcare fraud “empires”, it has also used the False Claims Act (FCA) as an effective tool in the civil context. In 2021, the Justice Department utilized the FCA to net more than $5.6 billion in settlements and judgments. Simply put, investment in fraud investigations yields a massive return on investment for the federal government.

Last month, the Office of the Inspector General (OIG) signaled that it is shifting its oversight activities so it can better supervise providers’ billing patterns for telehealth services. This oversight is likely to extend the attention on a wider set of billing, documentation, and other provider practices that may entitle the government to demand repayment. Providers submitting telehealth claims should take care to ensure that they align with best practices before the heightened scrutiny arrives.

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