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Supervision Drives FCA Settlement; Prosecutor: When Physician Isn't Present, Case Is Clear

By Nina Youngstrom

The absence of physician supervision is at the heart of a new False Claims Act settlement, underscoring the risks of billing for services provided incident to the physician's services. Dermatology Associates of Central New York agreed to pay \$811,196 over Medicare billing for physician services when they were provided by physician assistants (PAs) and nurse practitioners (NPs) without physician supervision, the U.S. Attorney's Office for the Northern District of New York said Dec. 3.

This was a black-and-white violation of the Medicare regulations on billing for services provided incident to the physician, which require direct physician supervision of nonphysician practitioners (NPPs) to bill 100% of the Medicare physician fee schedule, says Assistant U.S. Attorney Adam Katz. Between them, the Dermatology Associates physicians—a married couple—were out of the state or country for more than 200 days when services were billed under their provider numbers, he says. "It's difficult to provide direct supervision in Onondaga County, New York, when you are in another country," Katz tells *RMC*. The government won't have a hard time proving that kind of violation when travel records show physicians couldn't be supervising NPPs, he notes. "If they are violating that one requirement, the government doesn't need to get to other incident-to requirements that might be more difficult to prove," Katz says. "It's a clear case when somebody isn't physically present."

The Dermatology Associates physicians, Amin Fazeli, M.D., and Vadjista Broumand, M.D., admitted to certain conduct in the settlement.

The False Claims Act case against Dermatology Associates was set in motion in 2015 by a whistleblower, Elaine Cretaro-Williams, who was one of its NPs. The U.S. attorney's office intervened in part on Dec. 3. "Relator alleges, among other things, that Dermatology Associates falsely billed Medicare and Medicaid for services rendered by NPPs as though the services had been personally rendered or supervised by Drs. Fazeli or Broumand," the complaint states.

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