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Lincare Pays $29M in FCA Case Over MA, FFS Medicare; Compliance Allegedly Didn't Help

By Nina Youngstrom

In a case that underscores the importance of providers incorporating Medicare Advantage (MA) into their compliance programs, Lincare Inc., an in-home respiratory care company, agreed to pay $29 million to settle false claims allegations over its billing for oxygen equipment, the U.S. Attorney's Office for the Eastern District of Washington said Aug. 28.[1] Lincare allegedly billed Medicare Part B and MA plans for longer than the 36 months allowed.

The False Claims Act (FCA) complaint, filed by two employees turned whistleblowers, also is a cautionary tale about compliance professionals allegedly being unresponsive to employee complaints.[2] The employees alleged they didn't get any traction when complaining to compliance and others that Lincare was billing some MA plans for oxygen equipment past the 36 months.

"One of the changes providers are facing is the increased volume and importance of Medicare Advantage and with that goes increased enforcement of Medicare Advantage under the False Claims Act," said Jeffrey Fitzgerald, an attorney with Polsinelli in Denver. "Prudent providers will assess their compliance plans and audit processes to include some focus on Medicare Advantage."

In an unrelated settlement in March, a Philadelphia medical group, Complete Physician Services, and two physicians agreed to pay $1.5 million to settle false claims allegations they billed MA plans for unsupported diagnosis codes for chronic obstructive pulmonary disease and morbid obesity and upcoded Medicare Part B evaluation and management visits.[3] "Relators and the government take the position that they don't need to limit recovery to Part B," said attorney Allison DeLaurentis, with Goodwin in Philadelphia. She noted that the idea that FCA liability could attach to claims submitted to MA plans comes from 2009 amendments to the statute. "Before, the FCA provided that the false claim had to be presented to an officer or employee of the government," DeLaurentis said. "Now the statute imposes liability on one who presents or causes to be presented 'a false or fraudulent claim for approval' with no requirement the claim be presented directly to the government," she said. And the definition of "claim" specifically allows for claims made "to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest…" DeLaurentis explained that the "amendment is the hook that opens the door to the government's interpretation that false claims can be submitted to advantage plans." Their view is that "Medicare Advantage receives capitated payments from the government and is a program that advances the government's interest."