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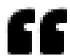
DOJ Joins Medicaid overbilling lawsuits against Kaiser Permanente

Government intervenes in six whistleblower complaints filed in federal court under the False Claims Act alleging fraudulent upcoding. by Nadia El-Yaouti

BEVERLY HILLS, CALIFORNIA, UNITED STATES, August 12, 2021 /EINPresswire.com/ -- The federal government has joined in on several lawsuits accusing health care giant Kaiser Permanente of Medicaid overbilling in its Medicare Advantage managed-care plans. Medicare Advantage, also known as Medicare Part C, is a program that allows patients to enroll in privately-run managed care plans while receiving Medicaid benefits. CMS pays those privately-run managed care plans a fixed fee per patient depending on that patient's “risk score.” A risk score is determined by several factors including a patient's personal information and their diagnosis.



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>
> *Art Kalantar, California Healthcare Attorney*

Since 2013, six whistleblower lawsuits have been filed in the Northern District of California against the health care company. The cases, which have been consolidated by the court, are United States ex rel. Osinek v. Kaiser Permanente, 3:13-cv-03891 (N.D. Cal.); United States ex rel. Taylor v. Kaiser Permanente, et al., 3:21-cv-03894 (N.D. Cal.); United States ex rel. Arefi, et al. v. Kaiser Foundation Health Plan, Inc., et al., 3:16-cv-01558 (N.D. Cal.); United States ex rel. Stein, et al. v. Kaiser Foundation Health Plan, Inc., et al., 3:16-cv-05337 (N.D. Cal.); United States ex rel. Bryant v. Kaiser Permanente, et al., 3:18-cv-01347 (N.D. Cal.); and United States ex rel. Bicocca v. Permanente Med. Group, Inc., et al., No. 3:21-cv-03124 (N.D. Cal.).

The lawsuits claim that the fraudulent upcoding has been going on since 2009. The whistleblowers argue in their complaints that Kaiser Permanente knowingly pressured some of its doctors to input diagnosis codes that increase a patient's “risk score.” In some instances, doctors were urged to create addenda to a patient's chart months, even up to a year, after their visit in order to boost the risk score higher. The addenda would often reflect a diagnosis or condition that the patient likely did not have.

One whistleblower, James Taylor, was a physician’s director of coding at Kaiser's Colorado Permanente Medical Group. Taylor’s lawyer, Michael Ronickher, released a statement saying,

"The scale of this case, and the number of whistleblowers who have come forward, shows how serious the claims are."

Acting U.S. Attorney Stephanie Hinds shared this sentiment, stating, “The Medicare Advantage Program maintains the health of millions, and wrongful acts that defraud the program cannot continue and will be pursued.”

The various complaints have been filed against Kaiser Permanent consortium members in California and Colorado. Commenting on the case, California healthcare law attorney Art Kalantar points out that doctors involved in the scheme could possibly be held individually or personally liable as well under conspiracy statutes. “It takes at least two persons to create a conspiracy to commit fraud,” Kalantar explains. “In this case, Kaiser Permanente allegedly knowingly billed for fraudulently upcoded services while the doctors allegedly altered the demographic information and the diagnoses of patients in Medicare Advantage Plans [MA Plans], in order to increase the per-person amount MA Plans pay to Kaiser Permanente.”

According to Taylor, the fraudulent diagnosis codes would result in payment adjustments that could range from a few hundred dollars up to $3,000 per claim. Taylor highlights that some of the highest yielding diagnoses included diabetes, kidney failure, and congestive heart failure. The original lawsuit filed by a whistleblower in San Rafael shared that Kaiser doctors went as far as using data mining to “retroactively change patient medical records.”

Kaiser Permanente has denied all allegations brought against them regarding fraudulent billing. David Deaton, who is representing the Health care giant, shared in a statement posted on their website, "We are confident that Kaiser Permanente is compliant with Medicare Advantage program requirements and we intend to strongly defend against the lawsuits alleging otherwise." The statement adds, “Our policies and practices represent well-reasoned and good-faith interpretations of sometimes vague and incomplete guidance from Centers for Medicare & Medicaid Services.”

Under the False Claims Act, the whistleblowers will be allowed to receive a portion of any damages recovered by the government, though damages have not been specified in the lawsuit. Lawsuits brought by private parties under the False Claims Act are called “qui tam” actions, meaning they are taken by a private person on behalf of the government. Plaintiffs can receive up to 30% of any recovery as a reward for bringing the suit, but their portion is reduced if the government intervenes and takes over the prosecution of the case.

Although whistleblowers receive a smaller recovery when the government intervenes, DOJ intervention is generally welcomed by private plaintiffs, according to attorney Kalantar. “The reason for this is that the U.S. government has significantly larger resources to litigate qui tam lawsuits,” Kalantar says. “Once the DOJ decides to intervene, it takes the lead in prosecuting the case. In addition, DOJ has the ability, and often will, include causes of action under other federal statutes, such as the Truth in Negotiations Act or The Anti-Kickback Statute and Stark Law, which

the private parties do not have the legal right to assert in their complaint since only the False Claims Act has a qui tam provision.”

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