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Mass. Eye and Ear Settles FCA Case; Patient Was the Whistleblower

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Massachusetts Eye and Ear Infirmary, Massachusetts Eye and Ear Associates Inc., and the Foundation of the Massachusetts Eye and Ear Infirmary Inc. agreed to pay \$2.678 million to settle false claims allegations set in motion by a patient with commercial insurance, the Department of Justice (DOJ) said April 20.^[1] The defendants, referred to collectively as Massachusetts Eye and Ear, allegedly billed Medicare and Medicaid for evaluation and management (E/M) services that were not “significant and separately identifiable” from nasal endoscopies and laryngoscopies performed on the same patients.^[2]

According to the settlement, Boston-based Massachusetts Eye and Ear Infirmary is a not-for-profit teaching hospital, Massachusetts Eye and Ear Associates is a medical group, and the Foundation of Massachusetts Eye and Ear Infirmary is the parent corporation for these and other organizations. They were hit by the False Claims Act (FCA) lawsuit in April 2018 after a patient, Benjamin Schwarz, didn’t like what he saw on his explanation of benefits (EOB) form. Schwarz didn’t think it accurately described services he received from a Massachusetts Eye and Ear physician, he alleged in the complaint. Schwarz informed both his insurer and the providers but was unsatisfied with their responses, which left him with a relatively small bill that eventually turned into a whistleblower complaint.

DOJ and the state allege that Massachusetts Eye and Ear billed Medicare Part B and Massachusetts Medicaid (MassHealth) for office visits in addition to nasal endoscopies and laryngoscopies, “when otolaryngologists did not actually perform significant and separately identifiable evaluation and management services during the period from January 1, 2012 through February 1, 2020,” the settlement explains. “To signify an otolaryngologist’s provision of a significant and separately identifiable evaluation and management service, a hospital’s claim must contain a Modifier 25 code, in addition to a Current Procedural Terminology evaluation and management service code.”

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