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DOJ Intervenes in FCA Complaints Against Kaiser Plan, Medical Groups

By Nina Youngstrom

The Department of Justice (DOJ) has intervened in six whistleblower lawsuits alleging that Kaiser Foundation Health Plan and other members of the Kaiser “consortium,” including medical groups, submitted inaccurate diagnosis codes to increase Medicare Advantage (MA) reimbursement. The false claims complaints allege Kaiser pressured physicians to produce addenda to medical records after the fact with risk-adjusting diagnoses that patients didn’t have and/or weren’t addressed, DOJ said July 30.^[1] The higher the risk, the more money CMS pays MA plans for their enrollees.

MA is fertile ground for False Claims Act (FCA) lawsuits because about one third of Medicare beneficiaries are enrolled in MA plans, said attorney Max Voldman, with Constantine Cannon, who represents one of the whistleblowers, James Taylor, M.D. Cases have been filed against other MA plans, and OIG has identified large overpayments to MA plans, including Anthem Community Insurance Company, in its compliance audits.^[2]

Some MA plans have settled cases. For example, Kaiser Foundation Health Plan of Washington, formerly known as Group Health Cooperative, paid \$6.3 million to settle an MA false claims lawsuit in November 2020.^[3]

“It feels like a tipping point,” said attorney Mary Inman, with Constantine Cannon, who represents the same whistleblower as Voldman. DOJ’s deadline for filing a complaint in intervention is Oct. 25, Voldman noted.

In a statement, Kaiser Permanente said, “We are confident that Kaiser Permanente is compliant with Medicare Advantage program requirements and we intend to strongly defend against the lawsuits alleging otherwise.”

Generally, MA cases focus on plans, not providers, but this time DOJ is also alleging false claims were submitted by The Permanente Medical Group Inc., Southern California Permanente Medical Group Inc., and Colorado Permanente Medical Group P.C., Inman noted. “Kaiser is both the plan and a provider in most of the allegations,” Voldman added. The other members of the consortium are Kaiser Foundation Health Plan Inc. and Kaiser Foundation Health Plan of Colorado.

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