

## Report on Medicare Compliance Volume 31, Number 28. August 08, 2022 Physician Practice Settles FCA Case on Incident-To Billing, Adopts Compliance Procedures

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By Nina Youngstrom

In a false claims settlement over billing for incident-to services, North Country Neurology P.C., a physician-owned practice in Watertown, New York, has agreed to pay \$850,000 about 16 years after it self-disclosed and returned a Medicare overpayment for similar conduct, the U.S. Attorney's Office for the Northern District of New York said Aug. 2.<sup>[1]</sup> The new settlement focuses on the lack of direct physician supervision and includes improper billing for Botox injections.

"When it happens a second time and the government could show you had knowledge, you are not going to be dealing with a simple overpayment with the Medicare administrative contractor. You will be dealing with a False Claims Act case," Adam Katz, the assistant U.S. attorney who handled the case, told RMC. He said North Country Neurology's noncompliance was revealed by "proactive data analysis." It's the third recent settlement in the northern district of New York over incident-to billing, which trips up providers for various reasons.

"It's almost unbelievable how incident-to billing is such a high-risk area," said Jean Acevedo, president of Acevedo Consulting in Delray Beach, Florida.

North Country Neurology accepted responsibility for the "facts set forth" in the settlement and acknowledged its "lackluster" compliance program at the time of the conduct, Katz said. "They chose to implement a more robust compliance program" as indicated in the settlement.

According to the settlement, for 120 patient encounters between Sept. 24, 2015, and June 12, 2019, North Country Neurology submitted Medicare claims "that improperly listed a physician as the rendering provider for services rendered by a physician assistant when no physician was physically present in the office and immediately available to furnish assistance and direction throughout the performance of the procedure."

Incident-to billing offers physician practices more reimbursement for services performed by nonphysician practitioners (NPPs), such as physician assistants (PAs) and nurse practitioners, if they comply with certain Medicare rules. For example, physicians must do the initial history and physical, establish a treatment plan, address new problems in subsequent visits and provide direct supervision, which means they are in the office and immediately available to help the patient. The reward: Services performed incident to the physician are billed at 100% of the Medicare physician fee schedule. Otherwise, NPPs' services are billed under their own national provider identifiers at 85% of the Medicare physician fee schedule.

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