

# Report on Medicare Compliance Volume 33, Number 7. February 26, 2024

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◆ The U.S. Department of Justice (DOJ) said Feb. 22 that settlements and judgments under the False Claims Act (FCA) reached more than \$2.68 billion in the fiscal year ending Sept. 30, 2023.<sup>[1]</sup> “The government and whistleblowers were party to 543 settlements and judgments, the highest number of settlements and judgments in a single year,” DOJ said. The figure for 2022 was \$2.2 billion. The lion’s share of FCA settlements and judgments comes from cases involving the health care industry, DOJ said.

◆ In a Feb. 16 notice in the *Federal Register*, CMS took a step toward a prior authorization program for procedures performed at ambulatory surgery centers (ASCs).<sup>[2]</sup> It would just be a demonstration, unlike the permanent, national prior authorization program for hospital outpatient departments, which applies to seven procedures. There’s another difference, according to an email that Ronald Hirsch, M.D., vice president of R1 RCM, received from a CMS official. “With this proposed ASC demonstration, providers will submit a prior authorization request before providing a service or be subject to prepayment review. If an ASC provider submits a claim without going through prior authorization, the claim will be stopped for prepayment medical review. This means that prior to paying the claim, the MAC will send the provider an Additional Documentation Request (ADR) letter through the US Postal Service and/or electronically. The provider will have 45 days to respond to the ADR with all requested documentation to support the services that are billed. The MAC will have 30 days to review the documentation and render a claim determination,” the CMS official wrote. In contrast, hospitals are required to submit requests for prior authorization to the MACs and, if they’re approved, put the unique tracking number on the claim form. Otherwise, hospitals won’t get paid. Hirsch said that makes prior authorization a condition of payment and without the UTN, hospitals won’t get paid. He wonders why the two prior auth programs would diverge like this.

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