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SNF Provider Settles FCA Case Involving Waivers; 'Incorrect Reasoning' Raises Questions

By Nina Youngstrom

In what's apparently the first False Claims Act (FCA) settlement over alleged misuse of COVID-19 waivers, ReNew Health Group and ReNew Health Consulting Services, a nursing facility and skilled nursing facility (SNF) company, and two of its executives have agreed to pay \$7.084 million, the U.S. Department of Justice (DOJ) said April 26.^[1] According to the settlement, ReNew billed Medicare nursing home residents under the Part A SNF benefit based on their exposure to COVID-19 from March 1, 2020, to June 31, 2022, and justified it with waivers—including the waiver of the three-day qualifying inpatient hospital stay—although they allegedly didn't require skilled care.^[2] For example, when a kitchen worker at one California nursing facility got COVID-19, nine residents were shifted to the SNF even though they didn't test positive, the whistleblowers alleged in the complaint that set the case in motion.^[3]

This appears to be the first false claims settlement for alleged misuse of COVID-19 waivers as opposed to abuse of COVID-19 relief funds more broadly, said attorney Ray Sarola, with Cohen Milstein Sellers & Toll PLLC, which represented Bay Area Whistleblower Partners.

But the settlement has a phrase—"incorrect reasoning"—that's at odds with the basis of an FCA violation, said former federal prosecutor Melissa Jampol. The government alleged that in March 2020, after learning about the waivers, CEO Crystal Solorzano, Chief Operating Officer Chaim Kolodny and other ReNew leaders "incorrectly reasoned" that many nursing home residents required skilled care because they might get COVID-19 and therefore ReNew SNFs could bill Medicare Part A and generate more reimbursement than they would for "standard" nursing home care, which isn't covered by Medicare. "This incorrect reasoning was disseminated within ReNew and the affiliated and formerly affiliated companies" and led some people in its operations to adopt a practice that led to the submission of SNF claims for residents who were near a COVID-19-positive resident or employee on the premise that the residents needed skilled care, the government alleged.

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