

Report on Medicare Compliance Volume 33, Number 21. June 10, 2024 Provider Pays \$14.9M in FCA Settlement Over CCM, Another E/M Code

By Nina Youngstrom

In possibly the first false claims settlement over chronic care management (CCM), Bluestone Physician Services of Florida LLC, Bluestone Physician Services, P.A. and Bluestone National LLC agreed to pay \$14.9 million to settle allegations they billed for evaluation and management (E/M) services for chronic care patients that didn't comply with Medicare, Medicaid and TRICARE requirements, the U.S. Department of Justice (DOJ) said June 5.^[1] The services were provided in assisted living and other care facilities.

The False Claims Act (FCA) lawsuit was set in motion by a whistleblower, Lisa Loscalzo, the former general manager for Bluestone's Florida market. According to the settlement, DOJ and the states of Florida and Minnesota alleged Bluestone submitted claims for the domiciliary rest home visit code for established patients (CPT 99337) and for the CCM code (CPT 99490) from January 1, 2015, through December 31, 2019, that didn't satisfy the requirements of the three federal health care programs.^[2] The claims for the E/M codes allegedly didn't support the level of services provided.

Bluestone, which entered into a five-year corporate integrity agreement with the HHS Office of Inspector General (OIG) as part of the settlement, didn't admit liability in the settlement.

"This underscores that chronic care management is an area of enforcement focus," said attorney Lauren Gennett, with King & Spalding. "Since this case was brought by a whistleblower, it also highlights that this is an area where we may see more relator activity."

CCM—which includes comprehensive care management, recording patient information, managing care transitions and sharing patient health care information—has already attracted audit scrutiny.^[3] OIG released two audits, with the most recent report finding continued Medicare overpayments because providers billed for CCM more than once for the same beneficiary for the same service period, for example.^[4]

A related area, remote patient monitoring (RPM), is also under the microscope, with an active item on OIG's work plan. Potential vulnerabilities of CCM and RPM under the FCA include overutilization, violations of the Anti-Kickback Statute and quality of care (e.g., for RPM, there may be questions about whether patients effectively transmitted data, such as blood pressure readings, and whether the physician acted on above-normal readings).

In terms of the Bluestone case, the domiciliary code cited in the settlement is no longer in use. "The CPT codes 99324 - 99337 for Domiciliary, Rest Home (e.g., Boarding Home), or Custodial Care Services are deleted beginning January 1, 2023," according to the *Medicare Claims Processing Manual*.^[5] "Beginning January 1, 2023, the CPT is merging the two E/M visit families currently titled 'Domiciliary, Rest Home (e.g., Boarding Home), or Custodial Care Services' and 'Home Services.' The new family will be titled 'Home or Residence Services.' The codes in this family (CPT codes 99341 - 99350) will be used to report E/M services furnished to a patient residing in their home, in an assisted living facility, in a group home (that is not licensed as an intermediate care facility

for individuals with intellectual disabilities), in a custodial care facility, or in a residential substance abuse treatment facility.”

Contact Gennett at lgennett@kslaw.com.

1 U.S. Department of Justice, Office of Public Affairs, “Chronic Disease Management Provider to Pay \$14.9M to Resolve Alleged False Claims,” news release, June 5, 2024, <https://bit.ly/3KvXMFt>.

2 Settlement agreement, United States of America, State of Florida, and State of Minnesota ex rel. Lisa Loscalzo v. Bluestone Physician Services of Florida LLC, Bluestone Physician Services, P.A., Bluestone National, LLC, et al., Case No. 2:20-cv-295-FIM-SPC-NPM, (M.D. Fla., 2023), <https://bit.ly/3Rgr8LE>.

3 Nina Youngstrom, “RPM, CCM Attract Audits, May Be Vulnerable to FCA Investigations,” *Report on Medicare Compliance* 33, no. 20 (June 3, 2024), <https://bit.ly/3Xctsa7>.

4 Amy J. Frontz, Medicare Continues To Make Overpayments For Chronic Care Management Services, Costing The Program And Its Beneficiaries Millions Of Dollars, A-07-19-05122, Office of Inspector General, U.S. Department of Health and Human Services, August 2021, <https://bit.ly/3Vlma2t>.

5 Centers for Medicare & Medicaid Services, “Billing Instructions for Home or Residence Services,” Transmittal 11,732, December 8, 2023, <https://go.cms.gov/3VfFJbf>.

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