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BLOG

DOJ Continues to Crack Down on Health Care Fraud Violations, Announcing Convictions and Enforcement Activity

AUGUST 14, 2023

The U.S. Department of Justice (DOJ) continued its health care fraud enforcement activity in June 2023, announcing two convictions and a national enforcement action involving charges against 78 individuals and over $2.5 billion in alleged fraud. This enforcement activity relates to efforts to defraud Medicare by billing for supplies that were not medically necessary, compounding drugs to maximize reimbursement from TRICARE, and other allegations of alleged health care fraud, telemedicine fraud, and opioid abuse-related schemes.

A1C Holdings LLC Conviction

On June 8, 2023, the DOJ, the Federal Bureau of Investigations (FBI) Detroit Field Office and the Department of Health and Human Services Office of Inspector General (HHS-OIG) announced the conviction of Steven King for conspiracy to commit health care fraud and wire fraud.[1] Notably, Steven King was Chief Compliance Officer of A1C Holdings LLC. According to court documents, A1C Holdings LLC, a pharmacy holding company, fraudulently billed Medicare over $50 million for dispensing lidocaine and diabetic testing supplies to Medicare beneficiaries that were not medically necessary. A1C Holdings LLC held pharmacies in various states, including Michigan, and violated Medicare and pharmacy benefit manager rules when A1C Holdings LLC secured prescriptions and refills on behalf of its pharmacies for medically unnecessary lidocaine and diabetic testing supplies.

According to the DOJ and its partners, King and his co-conspirators took several steps to conceal their scheme and ensure that Medicare continued to bill for medication and supplies, including shipping prescription refills without patient consent, transferring patients among pharmacies without patient consent, concealing the ownership of A1C Holdings LLC and its pharmacies, and enrolling their mail order pharmacies as brick-and-mortar retail locations to avoid more rigorous oversight. King faces a maximum of 20 years in prison.

Florida Pharmacy Solutions (FPS) Conviction

On June 16, 2023, the DOJ, HHS-OIG, the U.S. Department of Defense Office of Inspector General (DOD-OIG), the U.S. Department of Veterans Affairs Office of Inspector General (VA-OIG), and the FBI Tampa Field Office announced the conviction of David Byron Copeland for two counts of soliciting and receiving illegal health care kickbacks and three counts of offering and paying illegal health care kickbacks.[2] Copeland was a co-owner and senior sales manager at Florida Pharmacy Solutions (FPS). According to court documents and evidence presented at trial, Copeland and his accomplices engaged in a practice known as “test billing” to combine compounded drugs to

create the most expensive combination and maximize reimbursement from TRICARE. TRICARE is a federal program that provides health insurance benefits to active duty and retired service members and their families.[3]

Copeland and his accomplices paid bribes and kickbacks to salespeople and physicians who treated TRICARE beneficiaries to encourage the referral of prescriptions to FPS. Moreover, Copeland and his accomplices used blanket letters of authorization that allowed FPS to change the prescription components to make them more profitable. From 2012 through 2015, FPS billed TRICARE over $54 million for its compounded pharmaceuticals, and Copeland and his sales reps received millions of dollars in kickbacks based on a percentage of the amount that TRICARE reimbursed for their prescriptions. Following his jury convictions, Copeland faces a maximum of 10 years in prison. Two other accomplices, the former CEO of FPS and a former FPS sales representative, previously pleaded guilty for their roles in the fraud and are awaiting sentencing.

National Enforcement Action Charging 78 Individuals

On June 28, 2023, the DOJ, FBI, HHS-OIG, and many other federal and state law enforcement agencies announced a two-week nationwide law enforcement action that resulted in criminal charges against 78 defendants for their alleged participation in various healthcare fraud schemes that included over $2.5 billion in alleged fraudulent claims to the government.[4] The healthcare fraud involved includes telemedicine fraud, pharmaceutical fraud, and fraud related to opioid distribution. “These enforcement actions, including against one of the largest health care fraud schemes ever prosecuted by the Justice Department, represent our intensified efforts to combat fraud and prosecute the individuals who profit from it,” Attorney General Merrick Garland said in the press release.

Telemedicine Fraud

The enforcement action included charges against 11 defendants in connection with the submission of over $2 billion in fraudulent claims resulting from telemedicine schemes. According to the DOJ press release, an indictment in the Southern District of Florida alleges that the CEO, former CEO, and VP of Business Development of purported software and services companies conspired to generate and sell templated doctors’ orders for orthotic braces and pain creams in exchange for kickbacks and bribes. The conspiracy allegedly resulted in the submission of $1.9 billion in false and fraudulent claims to Medicare and other government insurers for orthotic braces, prescription skin creams, and other items that were medically unnecessary and ineligible for Medicare reimbursement.

As part of the alleged conspiracy, individuals in a massive telemarketing operation targeted the elderly and disabled with direct mail, TV advertisements, and other forms of advertising to induce them to contact individuals who “up-sold” the elderly and disabled on unnecessary medical equipment and prescriptions. According to the indictment, the software platform that the defendants allegedly operated was a conduit for these telemarketers to coordinate the payment of illegal kickbacks and bribes to telemedicine companies to obtain doctors’ orders for Medicare beneficiaries. According to the press release, after the original CEO sold the company in a corporate acquisition, the new corporate leadership allegedly chose to continue the pre-existing fraud scheme. In another telemedicine fraud case, in the Eastern District of Washington, a physician was charged for signing more than 2,800 fraudulent orders for orthotic braces.

These cases build on earlier telemedicine enforcement actions involving over $10.1 billion in fraud. For example, in April 2019, DOJ Operation Brace Yourself announced charges against 24 defendants, including the CEOs, COOs, and others associated with five telemedicine companies, the owners of dozens of durable medical equipment (DME) companies and three licensed medical professionals, for their alleged participation in health care fraud schemes involving more than $1.2 billion. The alleged scheme involved the payment of illegal kickbacks and bribes by DME companies in exchange for the referral of Medicare beneficiaries by medical professionals working with fraudulent telemedicine companies for back, shoulder, wrist, and knee braces that are medically unnecessary. The defendants are alleged to have submitted these high-volume claims that cost the government substantial sums, and the DOJ announced criminal charges against the defendants. No convictions or financial recoveries are described in the press release.[5]

Pharmaceutical Fraud

The enforcement action also included charges against 10 defendants in connection with the submission of over $370 million in fraudulent claims submitted in connection with prescription drugs. In one case, the owner of a pharmaceutical wholesale distribution company was charged for an alleged $150 million fraud scheme in which the company purchased illegally diverted prescription HIV medication, and then marketed and resold the medication by falsely representing that the company acquired it legally.

The defendant allegedly purchased the medication at a substantial discount from individuals who obtained the drugs through illegal "buyback" schemes in which they paid HIV patients cash for their expensive HIV medication and repackaged the medication for resale. To cover up their scheme, the defendant and others allegedly falsified labeling and product tracing documentation to make it appear legitimate. Pharmacies purchased the misbranded medications, dispensed them to patients, and billed them to health care benefit programs while the defendants reaped substantial illegal profits. In a related case, an individual in the Southern District of Florida was sentenced to 15 years in prison for his role in this nationwide scheme.

Opioid Distribution and Other Types of Health Care Fraud

The enforcement action also targeted over $150 million in false billings submitted in connection with other types of health care fraud, including the illegal distribution of opioids and clinical laboratory testing fraud. This includes charges against 24 physicians and other licensed medical professionals who allegedly illegally provided patients with opioids they did not need. The charges also include cases where healthcare companies, physicians, and other providers paid cash kickbacks to patient recruiters and beneficiaries in return for patient information, so that the providers could submit fraudulent bills for Medicare reimbursement.

The Center for Program Integrity of the Centers for Medicare & Medicaid Services (CPI/CMS) separately announced that it took adverse administrative actions in the last six months against 90 medical providers for their alleged involvement in health care fraud.

Key Takeaways

- The DOJ and other enforcement agencies continue to root out health care fraud at all levels of the health care system, including TRICARE.
- Senior leadership, including chief compliance officers, are not immune from individual accountability and potential criminal prosecution. Punishment for health care fraud violations can be severe, with individuals facing up to 20 years in prison.
- The DOJ's Fraud Section's Criminal Division continues to combat health care fraud through the Health Care Fraud Strike Force Program, which has charged more than 5,000 defendants since its inception in March 2007, involving collective billings of over $24 billion.

If you have additional questions or need further assistance, please reach out to Amandeep Sidhu (Partner, Government Investigations, Enforcement, and Compliance), Reed Stephens (Partner, Government Investigations, Enforcement, and Compliance), Amy Kearbey (Partner, Government Investigations, Enforcement, and Compliance), Christopher Parker (Associate, Government Investigations, Enforcement, and Compliance), James Jones (Associate, General Litigation), or your Winston & Strawn relationship attorney.

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[1] The DOJ press release is available here: https://www.justice.gov/opa/pr/chief-compliance-officer-convicted-50m-medicare-fraud-scheme.

[2] The DOJ press release is available here: https://www.justice.gov/opa/pr/man-convicted-54m-bribery-and-kickback-scheme-involving-fraudulent-prescriptions.

[3] More information about TRICARE is available here: https://www.tricare.mil/About.

[4] The DOJ press release is available here: https://www.justice.gov/opa/pr/national-enforcement-action-results-78-individuals-charged-25b-health-care-fraud.

[5] More information on Operation Brace Yourself can be found here: https://www.justice.gov/opa/pr/federal-indictments-and-law-enforcement-actions-one-largest-health-care-fraud-schemes.

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