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DOJ reaches settlement with provider based on chronic care management coding

By Jaime L.M. Jones, Esq., Brenna E. Jenny, Esq., and Francesca R. Ozinal, Esq., Sidley Austin LLP*

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Recently, DOJ, the State of Florida, and the State of Minnesota reached a nearly $15 million FCA settlement to resolve allegations that a provider knowingly submitted claims for services related to the management of patients in assisted living facilities ("ALFs"), group homes, and memory care units that did not comply with applicable federal healthcare program ("FHCP") requirements.

Bluestone was allegedly one of the highest billers of chronic care management services in the country.

This settlement is one of the first FCA settlements involving chronic care management ("CCM") codes.[1]

The settlement arose from a *qui tam* complaint alleging that Bluestone Physician Services of Florida LLC, Bluestone Physician Services, P.A., and Bluestone National, LLC (collectively "Bluestone") billed FHCPs for higher, more expensive levels of care than what was actually provided and for medically unnecessary services.

The settlement agreement releases claims arising from the submission of claims for domiciliary rest home visits under CPT code 99337 and non-complex CCM under CPT code 99490 when the medical records did not support the level of service billed.

The relator, a former Bluestone General Manager for the Florida market, alleged that Bluestone expected its providers consistently to bill domiciliary rest home visits at the highest level (99337 for established patients). Company-wide coding trends showed a distribution of 60% at the 99337 level for established patients.

The complaint alleged that based on this breakdown, and assuming a provider sees 15 patients per day, each Bluestone clinician would have spent on average 13.8 hours of face-to-face time with patients as part of domiciliary rest home visits. Relator alleged that Bluestone providers actually visited two ALFs per day and only spent an average of two to four hours at each ALF.

Relator alleged that Bluestone expected its providers "to exploit their CCM billings and bill the full amount permitted under Medicare." As a result, Bluestone was allegedly one of the highest billers of CCM services in the country.

Relator further alleged providers were not spending the appropriate amount of time with the patients during the face-to-face visits and they were billing FHCPs for medically unnecessary CCM services.

Bluestone entered into a five-year Corporate Integrity Agreement with the Department of Health and Human Services, Office of Inspector General ("HHS-OIG") in connection with the settlement. HHS-OIG previously concluded in a report (here)[2] that Medicare was making overpayments for CCM services, and the significant increase in utilization of CCM during the pandemic may result in greater scrutiny of CCM billing moving forward.

A copy of the settlement agreement can be found here[3] and a copy of the *qui tam* complaint can be found here.[4]

Notes:

[1] *See United States ex rel. Loscalzo v. Bluestone Physician Servs. of Florida, LLC*, 2:20-cv-00295 (M.D. Fla).

[2] https://bit.ly/3Wjn13k

[3] https://bit.ly/46bTVXU

[4] https://bit.ly/3YcCUuK

About the authors



Jaime L.M. Jones (L) is global co-leader of **Sidley Austin LLP**'s health care practice and a member of the firm's global life sciences leadership council. She draws on her experience defending health care and life sciences companies in government investigations, enforcement actions, and False Claims Act litigation to provide legal and compliance organizations and boards of directors with strategic, practical advice to manage enforcement, litigation and regulatory risk. She is based in Chicago and can be reached at jaime.jones@sidley.com. **Brenna E. Jenny** (C) leverages her experience in senior roles with the U.S. Department of Health and Human Services and the Justice Department's civil division to represent health care clients in government enforcement actions, internal investigations and compliance reviews. She is a partner in the firm's Washington, D.C., office and can be reached at bjenny@sidley.com. **Francesca R. Ozinal's** (R) practice focuses on health care enforcement, regulatory and compliance matters, including fraud and abuse involving the federal Anti-Kickback Statute, the Stark Law and the False Claims Act; federal health care program coverage and reimbursement; health care compliance programs; telehealth and telemedicine; and state and federal licensure issues. She is a senior managing associate in the firm's Washington, D.C., office and can be reached at fozinal@sidley.com.
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