The More Stark & AKS Change, the More They Stay the Same

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1

The Numbers . . .

OIG Recovers $2.73B from Criminal and Civil Actions in FY22

OIG Semiannual Report to Congress
(Apr. 1, 2022–Sept. 30, 2022)

- Recoveries down from $3B in FY21
- OIG expects to recover additional $1.2B from audits
- OIG brought 710 criminal actions and 736 civil actions
- OIG excluded 2,332 individuals and entities from participation

DOJ Recovers $2.2B from False Claims Act Cases in FY22

- FY 2022 recoveries less than half of the $5.6B in FY21
- Recovery amount below pre-pandemic levels
- But second highest number of settlements and judgments
- Recoveries from declined qui tams up by 40% from FY21

2

OIG – CMPs and Self-Disclosures

CMP Settlements

- **$4 million+:** 11 ambulance companies resolved allegations that they submitted claims for transportation to and from SNFs when such transportation was already covered by the SNF consolidated billing payment under Medicare Part A
- **$919,000:** Dr. Kenneth P. Martinez and Kenneth P. Martinez, M.D., d/b/a Neurology and Pain Specialty Center, allegedly submitted claims for medically unnecessary or up-coded services

Self-Disclosure Settlements

- **$4.9 million:** InSite Diagnostic Health allegedly submitted claims to Medicare, Medicaid, and Tricare that misused the Q5 modifier (indicating a substitute physician under a reciprocal billing arrangement) and listed the incorrect name of the rendering provider on the claims
- **$12.7 million:** Lee Health and Cape Coral Hospital allegedly submitted claims for professional and technical pain management procedures and E&M services performed by 2 independent contractors that did not meet Federal health care program coverage criteria
- **$6.2 million:** AMITA Health Mercy Medical Center and AMITA Health Saints Mary and Elizabeth Medical Center allegedly submitted claims to Medicare Part A for inpatient psychiatric admissions that were not medically necessary

Enforcement Trends

Large Recent Recoveries

- Kickbacks to providers by pharmaceutical and device companies – almost $1B between 2 settlements in Sept. 2022 alone
  - **Bayer $40M**
  - **Biogen $900M**
- EHR Companies $45M settlement of kickback allegations arising from donations to providers (Nov. 2022)

OIG Special Fraud Alert: Telemedicine

- Issued July 20, 2022 --Alert emphasizes the inherent fraud and abuse risk associated with providers entering into arrangements telemedicine companies
- Alert lists seven characteristics that indicate potential risk for fraud and abuse
- Alert was designed to provide practical compliance guidance and help establish guardrails for telemedicine arrangements

National Healthcare Fraud Takedown: July 20, 2022

- DOJ announced nationwide enforcement action involving criminal charges against 36 charged defendants across 13 federal districts fraudulent billing schemes tied to telemedicine, genetic and cardiovascular testing, and equipment **$1.2 billion** in false and fraudulent claims
- Charges focus on Anti-Kickback Statute violations
  - Payments by laboratory owners and operators in exchange for the referral of patients for testing services from medical professionals and fraudulent telemedicine and digital medical technology companies
  - International telemarketing network used deceptive techniques to induce thousands of elderly and disabled patients to agree to unnecessary genetic testing and durable medical equipment
- At the same time, CMS took administrative actions against 52 health care providers involved in similar schemes

DOJ Aggressively Pursuing Enforcement of COVID-19 Fraud

April 20, 2022: Nationwide COVID-19 Takedown

- Enforcement actions filed in 9 districts, criminal charges against 21 individuals involving more than $149M in allegedly fraudulent claims: fake cures, forged vaccination cards, misuse of Provider Relief Fund, and COVID-19 testing by clinical laboratories

COVID-19 Fraud Enforcement Examples

1. **April 2022:** **Physician Partners of America** paid **$24.5M** to settle allegations of unnecessary testing, improper remuneration to physicians, and false statements in connection with COVID-19 relief funds
2. **June 2022:** **MorseLife Health System** agreed to pay **$1.75M** to settle allegations that it facilitated COVID-19 vaccinations for ineligible donors
3. **January 2023:** **Colorado physician** convicted of theft for misappropriating federal COVID-19 relief funds (both MAAPP payments and PPP Loans)

Title search: The More Stark and AKS Change, The More They Stay the Same

Also available as part of the eCourse
Stark and Anti-Kickback: The More They Change, the More They Stay the Same

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