

DOJ Intervenes in Whistleblower Suits Against Kaiser Permanente

Richard P. Kusserow | August 19, 2021

Six complaints allege submission of inaccurate diagnosis codes.

The Department of Justice (DOJ) intervened in multiple whistleblower complaints alleging that Kaiser Permanente violated the False Claims Act by knowingly making its Medicare Advantage (MA) members appear to be sicker than they were in order to receive higher reimbursements.

MA plans are paid a per-person amount to provide Medicare-covered benefits to enrolled beneficiaries. The MA risk adjustment system assigns “risk scores” to beneficiaries based on their health status and other factors. In general, a beneficiary with more severe diagnoses will have a higher risk score, and the Centers for Medicare and Medicaid Services (CMS) will make a larger risk-adjusted payment to the MA plan for that beneficiary. For outpatient medical encounters, plans may only submit diagnoses to CMS for conditions that required or affected patient care, treatment, or management during an in-person encounter in the service year.

The complaints allege that to increase Medicare reimbursements, Kaiser Permanente pressured its physicians to create addenda to medical records to add risk-adjusting diagnoses that patients did not actually have and/or were not actually considered or addressed. This was often done months after patient encounters took place. One of the *qui tam* lawsuits notes that “[t]he most significant and consistent error is that Kaiser providers submit diagnosis codes representing active, current treatment of cancer when, in fact, the patient’s cancer is cured, in remission, or otherwise irrelevant to the services provided to the patient.”

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