

DOJ shifts focus to COVID-19 and Medicare Part C false claims fraud

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The Department of Justice's (DOJ) crackdown on COVID-19 and Medicare Part C false claims fraud is picking up steam, with the DOJ pursuing enforcement against several health care providers at the end of last year in connection with COVID-19 testing fraud.

This new enforcement trend includes actions against not one,¹ but two² Illinois labs that allegedly sought Medicare reimbursement for COVID-19 test kits that patients never ordered, and in some cases, for deceased individuals.

The uptick in enforcement activity reflects the DOJ's increased interest in ferreting out COVID-19 fraud — particularly testing scams — and the DOJ's overall enforcement goals going into 2024. At the end of last year, the acting assistant chief of the DOJ's health care fraud unit indicated³ the DOJ will be shifting its focus towards fraud involving COVID-19 testing and Medicare Part C, as well as scams that target vulnerable patient populations.

There is no question the DOJ's focus on COVID-19 testing is likely to bear fruit for the agency, especially after it announced⁴ last summer that it had already seized more than \$1.4 billion in stolen COVID-19 relief funds and brought criminal charges against more than 3,000 defendants for offenses relating to COVID-19 fraud.

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This new focus on COVID-19 testing schemes is in large part due to relaxed Medicare billing restrictions and other measures that were implemented during the pandemic and intended to improve access to COVID-19 testing, care, and treatment for vulnerable patient populations.

For example, the Families First Coronavirus Response Act sought to reduce monetary and non-monetary barriers to COVID-19 treatment by eliminating prior authorizations and patient cost-sharing for certain COVID-19 testing and related services during the COVID-19 public health emergency (PHE).⁵

Furthermore, under a September 2020 interim rule⁶ issued by the Center for Medicare & Medicaid Services (CMS), Medicare beneficiaries, during the PHE, were entitled to receive one unprescribed diagnostic COVID-19 test — although all subsequent testing was required to be medically necessary and ordered by a health care practitioner.

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As commonly occurs when regulations are relaxed, these policies opened the door to more widespread fraud and abuse. In August of last year, the DOJ prosecuted⁷ a provider in Maryland for allegedly submitting over \$15 million in false and fraudulent COVID-19 testing claims. The provider allegedly instructed his employees to bill for the COVID-19 test and other expensive evaluation and management visits, despite many of the complex additional services never having been performed.

In another instance, the DOJ charged⁸ two providers in California for their alleged roles in a health care fraud scheme that allegedly involved over \$144 million in false claims for COVID-19 laboratory tests that the DOJ says were not medically necessary.

Medicare Part C plans will also likely come under enhanced DOJ scrutiny in the coming year. Medicare Part C, also known as Medicare Advantage Plans, are Medicare-approved alternatives to traditional Medicare Part A and Part B plans that are offered through Medicare Advantage Organizations ("MAOs").

CMS provides MAOs with a set monthly payment for each enrollee to administer the enrollee's health benefits, based on the enrollee's health condition and risk factors. An enrollee with more complex health needs will result in the MAO receiving a greater monthly payment to cover the patient's care.

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For example, late last year a health insurer agreed⁹ to pay \$172 million to resolve False Claims Act allegations that it incorrectly submitted additional diagnosis codes to CMS in order to receive increased monthly payments for its Medicare Advantage enrollees.

This action was followed by another \$53 million dollar settlement,¹⁰ after an MAO executive allegedly submitted false information about enrollees' health conditions to increase CMS' payments to the MAO.

It is clear that the DOJ has stayed true to its word, with enforcement actions and investigations focused on COVID-19 testing fraud continuing to rise. MAO scrutiny is also likely to continue.

Notes:

¹ <https://bit.ly/4cJL96A>

² <https://bit.ly/3U40tCz>

³ <https://bit.ly/4avSx3s>

⁴ <https://bit.ly/4cKFFSK>

⁵ <https://bit.ly/43lBhFU>

⁶ <https://bit.ly/49mlFck>

⁷ <https://bit.ly/43l4LDK>

⁸ <https://bit.ly/3vGJHRB>

⁹ <https://bit.ly/3POrsAJ>

¹⁰ <https://bit.ly/3J4C4aJ>

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