

False Claims Act settlements to know from Q3 2022

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The third quarter of 2022 brought a number of noteworthy False Claims Act (FCA) settlements, including several over \$20 million and one in the high nine figures. This post summarizes key settlements of interest to healthcare providers.

Pharmaceutical companies

- On September 2, a pharmaceutical company¹ agreed to pay \$40 million to resolve two lawsuits alleging violations of the False Claims Act. The first lawsuit involved alleged kickbacks to hospitals and physicians to induce them to utilize certain drugs and the company's marketing of the drugs for off-label uses that were not reasonable and necessary. A second lawsuit alleged that the company knew about but downplayed a drug's risk of causing rhabdomyolysis in renewing contracts with the Defense Logistics Agency. The company was alleged to have submitted false claims to Medicare and the Medicaid programs of 20 states and the District of Columbia.

A durable medical equipment manufacturer agreed to pay over \$24 million to resolve False Claims Act allegations that it was paying illegal kickbacks to DME suppliers.

- On September 26, a pharmaceutical company² agreed to pay \$900 million to resolve allegations that it caused the submission of false claims to Medicare and Medicaid by paying kickbacks to physicians to induce them to prescribe certain drugs. The relator's complaint alleged that over five years, the company offered and paid illegal remuneration to healthcare professionals who spoke at or attended company events in the form of speaker honoraria, speaker training fees, consulting fees, and meals.

Lab companies

- On July 14, a lab company and its corporate parent³ agreed to pay \$9.85 million to resolve allegations that, over eight years, the lab company made lease payments to physicians and physician groups for the rental of office space for amounts that

exceeded fair market value, in violation of the Stark Law and the Anti-Kickback Statute. The lab company rented the office space to take patient blood samples, focusing on local referral streams to pick its locations, and it admitted to inaccurately measuring the amount of space it would use exclusively and including a disproportionate share of common spaces in calculating its lease payments. After the parent acquired the lab company, it conducted multiple internal audits that showed that payment to the specified physician lessors exceeded fair market value, but no overpayments were reported or returned to federal healthcare programs.

- On July 22, lab companies and their owners⁴ agreed to pay \$5.7 million to resolve allegations that they caused the submission of false claims to Medicare by paying kickbacks in return for genetic testing samples. The alleged scheme involved marketers soliciting genetic testing samples from Medicare beneficiaries and arranging to have a physician fraudulently attest that genetic testing was medically necessary, with the lab companies then processing the tests, receiving reimbursement from Medicare, and paying a portion of that reimbursement to the marketers.

Health systems

- On August 18, a county-organized health system and three healthcare providers⁵ agreed to pay a total of \$70.7 million according to three separate settlements to resolve allegations that they violated the federal False Claims Act and the California False Claims Act by submitting or causing the submission of false claims to Medi-Cal related to Medicaid Adult Expansion under the Patient Protection and Affordable Care Act (ACA). The settlements resolved allegations that the entities submitted claims to Medi-Cal for "Additional Services" provided to Adult Expansion Medi-Cal members that allegedly were not for "allowed medical expenses" under a DHCS contract but instead were for pre-determined amounts that did not reflect the fair market value of any Additional Services provided and/or were duplicative of services already required to be rendered.

Manufacturers

- On July 22, a medical device manufacturer⁶ agreed to pay \$12.95 million to resolve allegations that it violated the False Claims Act by causing the submission of false claims to

Medicare and Medicaid by paying kickbacks to physicians to induce their use of the company's implantable cardiac devices, such as pacemakers and defibrillators. The company allegedly paid physicians for an excessive number of trainings and, in some cases, for training events that either never occurred or were of little or no value to trainees. In addition, the company allegedly paid for physicians' holiday parties, winery tours, lavish meals with no legitimate business purpose, and international business class airfare and honoraria in exchange for making brief appearances at international conferences.

- On August 23, an optical lens manufacturer⁷ agreed to pay \$16.4 million to resolve allegations that the company violated the False Claims Act by causing claims to be submitted to Medicare and Medicaid that resulted from violations of the Anti-Kickback Statute. The United States alleged that over five years, the manufacturer offered or paid remuneration to eye care providers, such as optometrists and ophthalmologists, to induce those providers to order and purchase company products for their Medicare and Medicaid patients.

- On September 1, a durable medical equipment (DME) manufacturer⁸ agreed to pay over \$24 million to resolve False Claims Act allegations that it was paying illegal kickbacks to DME suppliers. The settlement resolved allegations that the manufacturer caused DME suppliers to submit claims for ventilators, oxygen concentrators, CPAP and BiPAP machines, and other respiratory-related medical equipment that were false based on the manufacturer's providing illegal inducements in the form of prescribing data that could assist the suppliers' marketing efforts to physicians.

Notes

¹ <http://bit.ly/3tcxMGb>

² <http://bit.ly/3FUGmBc>

³ <http://bit.ly/3WDPRum>

⁴ <http://bit.ly/3te0AhH>

⁵ <http://bit.ly/3EdEqLU>

⁶ <http://bit.ly/3hqAZzw>

⁷ <http://bit.ly/3G48npU>

⁸ <http://bit.ly/3Tk7lcr>

About the author



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