Insights: Alerts

No Harbor is Limitless: A Recent False Claims Act Settlement Involving a Georgia Healthcare Company Is a Good Reminder of the Restrictions of the Federal Anti-Kickback Statute's Safe Harbor Provisions

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The DOJ recently reached a $122 million settlement with Universal Health Services ("UHS") and Turning Point Care Center, LLC ("Turning Point") to resolve allegations of False Claims Act violations related to their billing practices. As part of the settlement, Turning Point agreed to pay the government $5 million to settle allegations that it fraudulently induced patients to seek treatment at its facilities by offering free or discounted transportation and housing. The government alleged that these inducements went beyond the scope of the federal Anti-Kickback statute safe harbor provisions. While many have commented upon the allegations related to UHS's billing practices, the allegations against Turning Point, which is located in Metairie, Georgia, serve as a good reminder of the limitations of the exceptions to the federal Anti-Kickback statute (42 U.S.C. § 1320a-7b).

The Anti-Kickback statute prohibits, among other activities, medical providers from providing certain gifts or services to their Medicare or Medicaid patients. Under certain conditions, however, healthcare facilities are permitted to offer free or discounted services in association with medical treatment. These allowable services, known as safe harbors, are outlined in the federal regulations relating to the Anti-Kickback statute (42 CFR § 1001 et seq.). The regulations are specific, and the Turning Point case demonstrates the liability companies may face if employees venture outside the scope of the safe harbor provisions. Below are two ways that Turning Point allegedly went beyond the limitations of the safe harbors:

- **Local Transportation (42 CFR § 1001.952(bb)):** Healthcare companies may provide free or discounted transportation "for the purpose of obtaining medically necessary items and services," but only under certain conditions. Such transportation must be limited to within 25 miles of the healthcare provider, or 50 miles if the patient lives in a rural area. A patient may not be transported via air, luxury, or ambulance-based travel. Turning Point allegedly provided transportation well beyond these limitations, including allegedly covering transportation from as far as Michigan and New England. Additionally, Turning Point allegedly provided patients with transportation to the grocery store, the mall, and other places that were not necessary for their treatment. Although the allegations are extreme, they are good reminders that the "local transportation" exception to the Anti-Kickback statute is limited to just that—local transportation.
- **Promotes Access to Care (42 C.F.R. § 1003.110):** "Remuneration" under the Anti-Kickback statute does not include items or services "that improve a beneficiary's ability to obtain items and services payable by

Medicare or Medicaid" and are unlikely to (1) "interfere with, or skew, clinical decision making," (2) "increase costs to Federal health care programs or beneficiaries through overutilization or inappropriate utilization," and (3) raise "patient safety or quality-of-care concerns." Generally, free or discounted lodging offered by healthcare providers is likely to be considered an inducement that does not fall under the "Promotes Access to Care" exception. The Department of Health and Human Services ("HHS") has stated, however, that one or two night stays at "modest" hotels for financially disadvantaged patients may fall under the exception if the patients have already scheduled their treatment. Office of Inspector Gen., U.S. Dep't of Health & Human Servs., OIG Advisory Opinion No. 17-01 (Mar. 10, 2017).The government alleged that Turning Point, however, advertised and offered discounted and free lodging to potential patients, prior to any agreed upon procedure and regardless of each patient's financial means. Although companies may want to help their patients and do what they can to make patients' treatment as convenient as possible, the allegations against Turning Point demonstrate that companies need to be careful to ensure that they abide by HHS's guidance (in advisory opinions or otherwise), even if the regulations themselves do not clearly lay out what constitutes acceptable practice.

The Turning Point settlement is a good reminder to healthcare companies about the limitations of the Anti-Kickback safe harbors. Though companies may only be attempting to assist their patients in getting the medical care that they need, such attempts may run afoul of the Anti-Kickback statute. As healthcare fraud continues to be a focal point of federal and state law enforcement,[1] companies need to be diligent in ensuring that their employees understand the parameters of the Anti-Kickback statute.

Footnotes

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[1] All Georgia False Claims Act settlements in 2020 have been related to medical billing practices. *See*, *e.g.*, Press Release, U.S. Attorney's Office for the N. Dist. Of Ga., U.S. Dep't of Justice, Atlanta Hospital System to Pay $16 Million to Resolve False Claims Allegations (June 25, 2020), https://www.justice.gov/usao-ndga/pr/atlanta-hospital-system-pay-16-million-resolve-false-claims-allegations; Press Release, U.S. Attorney's Office for the S. Dist. Of Ga., U.S. Dep't of Justice, Augusta University Medical Center Agrees to Pay $2.625 Million to Settle False Claims Act Investigation (June 24, 2020), https://www.justice.gov/usao-sdga/pr/augusta-university-medical-center-agrees-pay-2625-million-settle-false-claims-act; Press Release, U.S. Attorney's Office for the N. Dist. Of Ga., U.S. Dep't of Justice, Hospice to Pay $1.75 Million to Resolve False Claims Act Allegations (Mar. 4, 2020), https://www.justice.gov/usao-ndga/pr/hospice-pay-175-million-resolve-false-claims-act-allegations; Daniel Seiden, AseraCare to Pay $1 Million to Settle False Claims Act Suit, *Bloomberg News*, Feb. 28, 2020, https://news.bloomberglaw.com/health-law-and-business/aseracare-to-pay-1-million-to-settle-false-claims-act-suit.