

Hospitals Beware - Inpatient

Kyphoplasty Procedures Remain a False Claims Act Target

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Kyphoplasty is a minimally invasive procedure used to treat certain spinal fractures often due to osteoporosis. Since the filing of a qui tam action, more than 130 hospitals have entered settlements with the Department of Justice (DOJ) totaling approximately \$105 million to resolve allegations that they mischarged Medicare for kyphoplasty procedures.

On December 18, 2015, the DOJ announced another group of hospitals entering such settlements. This announcement noted that 32 hospitals will pay the U.S. government more than \$28 million to settle allegations of false claims. At issue in the numerous settlements is the billing of kyphoplasty procedures as a more costly inpatient procedure, rather than an outpatient procedure. As a result of billing for inpatient services, the hospitals increase their Medicare billings. U.S. Attorney William J. Hochul Jr. is quoted as saying "we will never allow hospitals to put profits ahead of patients."

In addition to the numerous settlements against hospitals throughout the country, Medtronic Spine LLC, the corporate successor to Kyphon Inc. for \$75 million to settle allegations that it caused false claims to be submitted to Medicare as a result of it counseling hospital providers to perform kyphoplasty procedures on an inpatient basis rather than the less costly outpatient procedures. The vast majority of the settlements were the result of a qui tam, or whistleblower, lawsuit brought under the False Claims Act by a former reimbursement manager and a former regional sales manager for Kyphon. The latest settlements announced on December 18th resulted in the whistleblowers receiving a total of approximately \$4.75 million.

What remains clear in light of the continuing settlements over inpatient Medicare billings for kyphoplasty procedures, is that the DOJ will continue to focus its investigations on inpatient kyphoplasty procedures. If you have hospital clients who may be billing on an inpatient basis for kyphoplasty procedures, please let them know that the DOJ is watching such billings. If those billings are not properly documented to support the level of care provided, those providers could also find themselves in the company of the 130 hospitals who have settled with the DOJ for alleged false claims.

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