Is Every Case a Part C Case Now?

Key Takeaways

Medicare Advantage is an Enforcement Priority

MA spending exceeds $500 billion per year, making it the largest contributor to Medicare spending

DOJ and OIG are focused on identifying fraud, waste and abuse in MA spending

DOJ HHS Working Group reestablished in July 2025; focus areas include MA enforcement

OIG Recently Issued Updated MA Compliance Program Guidance

Provides comprehensive guidance to any entities participating in the MA program, including plans and providers

Topics:

- Access to care
- Marketing and enrollment
- Risk adjustment
- Quality of care
- Oversight of 3rd parties
- Risks specific to organization types (e.g., vertically integrated organizations)
- Submission of accurate claims

Includes risk area identification and tips for ensuring compliance across all areas

Top Recent MA Matters

Kaiser: $556m (alleged that providers encouraged to add diagnoses)

Aetna: $117m (alleged one-way chart reviews resulted in inaccurate diagnoses being submitted)

Community Care: $36m (alleged diagnoses were not properly made, treated or documented)

The Villages: $541m (self-disclosure; alleged initiatives led to submission of inaccurate diagnoses)

Enforcement Focused in Three Areas

Government and relators pursue multiple theories of liability for MA claims.

Risk Adjustment

Inaccurate diagnoses result in unsupported payments – cases focus on incomplete audits or initiatives that result in inadequately documented diagnoses

Key Enforcement Issues:

- Audits that are not comprehensive (i.e., only look to add and not remove diagnoses)
- Coding initiatives that result in adding diagnoses that do not meet treatment or documentation requirements

Suspect Payments & Kickbacks

Enforcement focused on payments between MAOs and HCPs, and between MAOs or HCPs and brokers, each of which could influence enrollment or patient choice

Key Enforcement Issues:

- Payments to HCPs may be used to improperly incentivize enrollment of HCP's patients in MAO plan
- Payments to brokers may improperly steer patients to enroll in certain plans or choose certain provider groups

MA Damages in Conventional FCA Cases

DOJ position is that false information submitted to MAOs can form an actionable false claim; MA claims are therefore at issue in most traditional FCA cases

Key Enforcement Issues:

- Relators may seek to include payments received from MA plans when calculating damages in FCA matters – even when there is no MA-specific scheme at issue