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DOJ Continues to Press Medicare Advantage Fraud Case Against UnitedHealth While CMS Clamps Down on Retroactive MA Denials

On April 2, The Department of Justice (DOJ) requested a federal judge not to dismiss its ongoing fraud case against UnitedHealth Group, which alleges the company collected billions of dollars from the Medicare Advantage (MA) program improperly.

The case originates from a former UnitedHealth employee, Benjamin Poehling, who accused the company of systematically assigning medical diagnoses to MA members, resulting in additional payments from the government over several years. Poehling's lawsuit claims the company failed to remove diagnosis codes that were unsupported by members' medical charts, even after reviewing those charts.

The DOJ's arguments represent a significant effort in the whistleblower case that it joined in 2017 and a response to a special master's March recommendation which attempted to argue that the DOJ lacked sufficient evidence to demonstrate that UnitedHealth withheld at least \$2 billion in overpayments from taxpayers illegally. DOJ argued the special master had misinterpreted the federal False Claims Act and ignored UnitedHealth's own evidence which did not find support for almost 2 million diagnosis codes.

UnitedHealth has until May 2 to reply to the DOJ's response while the DOJ will have the opportunity to respond to UnitedHealth's filing by May 19, before oral arguments occur in June. U.S. District Court Judge Fernando Olguin is expected to rule on the case sometime this summer.

Meanwhile, on April 4, the Centers for Medicare and Medicaid Services (CMS) under the Trump administration decided to finalize provisions from a MA rule proposed by the Biden Administration last November, including a provision which prevents MA plans from being able to

retroactively deny previously approved hospital stays. The rule also bolsters prior authorization reporting and expands what CMS can regulate in terms of MA plan marketing. CMS had also proposed requiring MA plans to share their entire provider directory with CMS, but delayed approving that for the time being.