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# Investigators target fraud that exploits rural hospitals

ALEX KACIK



Modern Healthcare Illustration / Getty Images

The COVID-19 financial crunch will likely lead to more healthcare fraud as new management companies of cash-strapped providers try to avoid closure, legal experts said.

A spate of bankruptcies is expected this fall as small hospitals that can't weather COVID-19's margin compression restructure. There will be opportunistic buyers who toe the threshold between maximizing reimbursement and fraud, legal experts said, and they expect an uptick in fraudulent activity.

"Where we will see it happen is with aggressive, small, for-profit buyers who are hands-on and will try new approaches," a consultant who works with hospitals said, adding that there is no question COVID-19 will prompt new schemes. "There are a lot of bankruptcies coming down the pike, and you'll have burned buyers who don't have the appetite for taking on more acute-care risk. A number of them will say: 'We can get this thing in bankruptcy and make the numbers work,' whether it's through aggressive coding, lab billing—you pick it."

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Hospitals and health systems around the country have implemented emergency procedures and protocols in response to—or in anticipation of—a surge in COVID-19 cases. In hotspot areas, many of these organizations are dealing with extraordinarily high call volumes, significant appointment backlogs, limited telehealth/virtual health capabilities, challenged triage systems, supply shortages, and a limited ability to quickly test patients for the virus. Meanwhile, cases not involving COVID-19 and elective cases have decreased significantly, which is disrupting the flow of revenue and creating staffing challenges.
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Lab billing schemes have been a popular avenue for fraud, reinforced by an indictment unsealed this week. One version of the scheme involves a company buying a struggling rural hospital, which receives more money for tests than lab companies because of its higher fixed costs and lower volume, and using its favorable contracts with commercial insurers to boost reimbursement for lab tests—even ones from patients who didn't visit the hospital.

Hospital managers, lab owners, billers and recruiters were indicted for funneling fraudulent lab test claims through rural hospitals in several states to exploit the higher reimbursement rates, according to the Justice Department. The 10 individuals who were charged with 23 counts of conspiracy to commit fraud and money laundering allegedly billed private insurance companies approximately $1.4 billion from November 2015 to February 2018 and were paid around $400 million.

Those involved would take over financially unstable rural hospitals through management companies they owned and operated and bill private insurance companies for expensive urine and blood tests that were conducted at labs and run through billing companies they controlled or were affiliated with, according to the indictment. While outside laboratories did most of the tests, the charged individuals allegedly billed insurers as if they were done at rural hospitals, which receive higher reimbursement rates than the outside labs.

The lab tests were often unnecessary, according to the indictment. The conspirators would obtain urine specimens and other samples through kickbacks paid to recruiters and providers—often sober homes and substance abuse treatment centers. They would allegedly funnel the money through legitimate businesses to hide the scheme and distribute the proceeds.

"Who does the buying becomes more important than ever because, as I think this fraud illustrated, you can hide a lot of improper conduct in a rural health facility," said Mark Silberman, a partner in Benesch's healthcare and life science group who has served as a state and federal prosecutor. "Candidly, if fraud has been conducted to this degree of success, there is real potential that it is being done elsewhere."

But these small hospitals with narrow margins, not to mention the surrounding communities that rely on them, are often the ones that can least afford a fraud investigation, putting law-abiding operators in a difficult position, he noted.

"It is unquestionable the degree of scrutiny over government healthcare dollars is going to increase because of the increasing volume of people reliant on Medicare, Medicaid and Tricare and the number of people in rural communities who will require significant care over the coming years," Silberman said.

The Justice Department recovered more than $2.6 billion of healthcare fraud settlements in 2019, which aligns with the average trend in annual settlements over the decade prior. Rural hospitals will likely be an area of focus for state and federal investigators, given that these schemes can undermine access to care in underserved communities, said Brian French, a partner at Nixon Peabody.

"As rural hospitals become more desperate, it's easier to be inadvertently lured into a deal by someone making promises to bring in more money and operate the facility more efficiently to maintain access and keep employees working," said French, adding that rural and critical-access hospitals are attractive targets because of their higher reimbursement rates. "There is a lot of pressure for these hospitals to stay afloat."

These investigations inadvertently punish rural hospitals, he added, noting that a number of the hospitals named in the indictment have already gone under or are in bankruptcy proceedings. While there hasn't been a wave of bankruptcies yet, legal experts expect one this fall.

Rural hospitals had been struggling prior to the pandemic as they cope with dwindling Medicare reimbursement while more patients migrate to Medicare, Medicaid and Tricare. About 46% of the country's 1,844 rural hospitals were operating in the red as of 2019, up from 40% in 2017, according to the Chartis Center for Rural Health. COVID-19 has only made things worse.

A dozen rural hospitals have closed in 2020 so far, bringing the total to 171 since 2005, according to researchers at the University of North Carolina.

In addition to a focus on rural providers, the indictment signals that the Justice Department is increasingly willing to prosecute fraud involving commercial payers, said Danielle Sloane, a healthcare attorney with Bass, Berry & Sims.

"That has been percolating for a while. This case shows not only how it hurt commercial payers and self-insured employers' bottom lines, but also the surrounding community," she said, adding that the public health emergency highlights the importance of rural hospitals to their communities. "There is almost a heightening desire of the prosecutors to make an example of someone who took advantage of hospitals in these communities that don't have much access to healthcare services."

Another indicator is the Eliminating Kickbacks in Recovery Act that passed in October 2018; it gives investigators a direct avenue to prosecute fraud affecting commercial insurers, Sloane said.

"It is really a congressional statement that says healthcare fraud in the commercial space is not OK either—we're not just going to watch federal programs anymore," she said.

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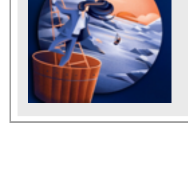
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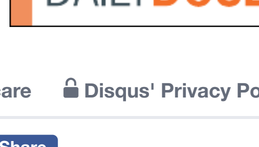


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