Dos and Don'ts of Working With Physicians

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July 19, 2019

Disclosure

Jeff Baird, Esq. is Chairman of the Health Care Group with Brown & Fortunato, P.C. The conflict of interest was resolved by peer review of the slide content.

Learning Objectives

- Summarize federal and state laws that govern the type of relationship a pharmacy can have with a physician.
- Describe the "tools" that the pharmacy can develop to assist it in reviewing its arrangements with physicians.
- Explain legally acceptable strategic relationships with physicians in order to provide excellent patient care and facilitate referrals from physicians.

Introduction

Introduction – Marketing and Arrangements with Referral Sources

- The "Greatest Generation," consisting of 23 million Americans, has been replaced by 78 million "Baby Boomers" who are retiring at the rate of 10,000 per day.
- Unlike earlier generations, Boomers will live long lives, their bodies will break down as they age, and it will cost the taxpayers a lot of money to keep Boomers alive.
- In opposition to this increasing demand is the reality of limited money … in other words, the proverbial "Irresistible Force Meeting the Immovable Object."

Introduction – Marketing and Arrangements with Referral Sources

- And so while the demand for pharmacy products and services will increase exponentially, the pharmacy will need to be innovative and efficient to generate a profit.
- A key component to innovation is to enter into strategic relationships with physicians and referral sources … within legal guidelines.
- The following slides will discuss these legal guidelines, how strategic relationships with physicians and other referral sources can be properly set up, and those relationships that need to be avoided.

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Collaboration With Physicians

Legal Guidelines

- In working together, the pharmacy and physician need to be aware of applicable federal and state statutes.
- The federal anti-kickback statute ("AKS") prohibits a pharmacy from paying any money (or giving "anything of value") to a physician in exchange for (i) the referral of government health care program patients or (ii) arranging for the referral of government program patients.

Legal Guidelines

- There are a number of "safe harbors" to the AKS, one which is the Personal Services and Management Contracts ("PSMC") safe harbor. This states that an arrangement does not violate the AKS if a number of requirements are met, including the following:
  - The parties enter into a written agreement with a term of at least one year.
  - The compensation paid is fixed one year in advance (e.g., $18,000 over the next 12 months, or $1500 per month).
  - The compensation is the fair market value ("FMV") equivalent of the services rendered.

Legal Guidelines

- The federal Stark physician self-referral statute ("Stark") states that if a physician has an ownership or compensation arrangement with a health care provider that furnishes "designated health services" ("DHS"), then the physician cannot refer Medicare or Medicaid patients to the provider...unless a Stark exception applies. A pharmacy furnishes DHS.
- One exception is the "personal services" exception, which is closely similar to the PSMC safe harbor.
- Another exception is the "rural provider" exception, which states that the Stark prohibition does not apply if at least 75% of the provider's patients reside in rural areas.

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Legal Guidelines

- In addition to federal laws, there are state laws that need to be examined. These include:
  - State anti-kickback statutes - Some statutes apply only when the payor is the state Medicaid program. Other statutes apply even if the payor is a commercial insurer or a cash-paying patient.
  - A number of states have physician self-referral statutes that are similar to Stark.
  - Each state has a set of statutes that are specific to physicians.

Collaborative Practice

- A Collaborative Practice Agreement ("CPA") formalizes the practice relationship between a physician and a pharmacy. This is a common way to integrate pharmacies into team-based care.
- Pursuant to the CPA, the physician authorizes the pharmacy to perform certain patient care functions, such as initiating or modifying medical therapy, ordering lab tests, and authorizing refills.

Collaborative Practice

- Laws governing CPAs vary from state-to-state. State laws can differ on the following:
  - Whether the CPA applies to a single patient or to multiple patients.
  - Whether the CPA is limited certain practice settings.
  - Which parties are allowed to enter into the CPA (All prescribers? Physicians only? Physicians and Nurse Practitioners?).
  - Qualifications of the pharmacist
- Some states require the parties to have liability insurance. Some states declare the CPA invalid after a certain period of time.

Sharing of Information

- If the physician is treating the patient, and if the pharmacy is dispensing prescription drugs to the patient for which the physician is treating the patient, then the physician and pharmacy can share patient information that is specific to their joint efforts to treat/serve the patient.
- In sharing the information, the joint goal of the physician and pharmacy is to facilitate the treatment of the patient's condition.
- With this data in hand, both the physician and pharmacy can share with hospitals and third party payors ("TPPs") the success they have had in treating conditions and keeping patients out of the hospital.

Clinical Study

- The pharmacy and physician can participate together in a clinical study.
- Ideally, the clinical study will be sponsored by a hospital or medical school…and will be overseen by an Institutional Review Board ("IRB"). It is important that the clinical study not be a disguised kickback scheme designed to funnel compensation to referring physicians.
- The pharmacy can use the results of the clinical study to show physicians, hospitals and TPPs (i) that the pharmacy has a sophisticated business model and (ii) that the pharmacy's services are successful in treating conditions and keeping patients out of the hospital.

Medical Director

- A physician (regardless of whether or not he is a referring physician) can be a 1099 independent contractor Medical Director for the pharmacy.
- If the physician refers to the pharmacy, then the Medical Director Agreement needs to comply with (i) the PSMC safe harbor to the AKS and (ii) the personal services exception to Stark.

Education Workshops

- The physician can set up times for the pharmacy to send representatives to the physician's office to educate the physician's employees regarding (i) products and services offered by the pharmacy and (ii) how the pharmacy's products/services can treat specific conditions.
- The physician can set up times for the pharmacy to send representatives to the physician's office to present workshops to the physician's patients who have conditions that can be treated by the pharmacy's products and services.

Sponsoring the Physician as a Speaker

- The pharmacy can pay the physician for speaking at educational workshops and dinners.
- In order to avoid problems with the AKS and Stark:
  - The topic presented by the physician must be substantive and relevant to the audience.
  - The audience must be made up of individuals who will benefit from what the physician has to say.
  - The compensation to the physician must be FMV.

Renting Space to/from a Physician

- The pharmacy can rent space from…or to…a physician.
- The arrangement needs to comply with the Space Rental safe harbor to the AKS and the space rental exception to Stark. The safe harbor and exception say the same thing. Among other requirements:
  - The rental agreement must be in writing with a term of at least one year.
  - The rent paid must be fixed one year in advance and be FMV.

Employee Liaison

- The pharmacy can place an employee liaison in the physician's office. The liaison can be present in the physician's office for as many…or as few…hours as the physician and pharmacy agree on.
- The employee liaison cannot perform any duties that the physician is responsible to perform. Doing so will save the physician money…which constitutes "something of value" to the physician…hence, a violation of the AKS.

Loan Closet

- If the pharmacy provides DME, it can store DME inventory at the physician's office. If the physician orders a DME item, and if the patient elects to obtain the items from the pharmacy (that has the consigned inventory at the physician's office), then the physician can "pull the item from the loan closet," hand the item to the patient, and send the patient home.
- It would be wise for the physician and pharmacy to memorialize the arrangement in a written Equipment Placement Agreement.

Rural Community

- If the pharmacy qualifies as a "rural provider" under Stark, then a physician can own a percentage interest in the pharmacy...and can refer Medicare and Medicaid patients to the pharmacy. This will comply with the "rural provider" exception under Stark.
- In addition to satisfying Stark, it will be important that the arrangement not violate the AKS. Ideally, the arrangement will comply with the Small Investment Interest safe harbor to the AKS. If that is not possible, then the arrangement needs to comply with the (i) OIG's 1989 Special Fraud Alert ("Joint Ventures") and (ii) the OIG's April 2003 Special Advisory Opinion ("Contractual Joint Ventures"). Among other requirements:
  - The physician must purchase, at FMV, his percentage ownership interest in the pharmacy.
  - Profit distributions to the physician must be based on his percentage ownership interest in the pharmacy. The profit distributions cannot be tied to the number of (or dollar amount resulting from) the physician's referrals.

Non-Rural Community

- If the pharmacy does not qualify as a "rural provider," then a physician can nevertheless own a percentage interest in the pharmacy. However, to avoid problems under Stark, the physician cannot refer Medicare and Medicaid patients to the pharmacy. Stark does not prohibit a physician from referring commercial insurance patients to the pharmacy.
- The physician and pharmacy will also need to examine state law to determine if there are any prohibitions or restrictions against the physician referring commercial insurance patients to a pharmacy in which the physician has an ownership interest.

Preferred Provider

- The physician and pharmacy can enter into a Preferred Provider Agreement in which, subject to patient choice, the physician will refer patients to the pharmacy.
- In return, the pharmacy will commit to provide extraordinary services (i.e., services that pharmacies normally do not provide) in order to keep the patient healthy and keep the patient from going to the hospital.

Continuing Education Conference

- The pharmacy may desire to subsidize the expenses of a physician for him to attend a continuing education conference that addresses disease states that the pharmacy treats with its products and services.
- The pharmacy may do this…but only up to a specific dollar limit. One of the Stark exceptions is the non-monetary compensation exception which allows a pharmacy to spend up to a specified annual dollar amount on a physician. For 2019, this dollar amount is $416.
- And so in 2019, a pharmacy can spend up to $416 for (or on behalf of) a physician for meals, entertainment, travel, conferences, etc.

ACO

- A physician can lobby an ACO for a pharmacy to be a "preferred provider" for hospitals and physicians that comprise the ACO.

Expenditures for Physicians

Introduction

- A physician is a referral source to the pharmacy.
- The physician refers patients who are covered by a government health care program, who are covered by commercial insurance, or desire to pay cash.
- If a pharmacy pays money to a physician for services, or provides meals, gifts and entertainment to a physician, or subsidizes a trip that the physician will take, then both the pharmacy and the physician need to comply with the federal and state laws that govern these arrangements.

What a Pharmacy Can Spend on (or Pay to) a Physician

- While the Stark non-monetary compensation exception allows a pharmacy to spend up to a set amount per year (e.g., $416 in 2019) for non-cash/non-cash equivalent items for a physician, the Medicare anti-kickback statute does not include a similar exception.
- Nevertheless, if the Stark exception is met, it is unlikely that the government will take the position that the non-cash/non-cash equivalent items provided by the pharmacy to the physician violate the AKS.

What a Pharmacy Can Spend on (or Pay to) a Physician

- In addition to complying with Stark and the AKS, the pharmacy and the physician also need to comply with applicable state law.
- Even though the pharmacy and the physician will need to confirm this, it is likely that compliance with the non-monetary compensation exception will avoid liability under state law.
- And so the bottom line is that a pharmacy can provide gifts, entertainment, trips, meals, and similar items to a physician so long as the combined value of all of these items do not exceed the annual amount set by CMS ($416 in 2019).

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What a Pharmacy Can Spend on (or Pay to) a Physician

- For example, if a pharmacy wants a physician to accompany the pharmacy on a trip to a continuing education conference, in 2019 the pharmacy can safely subsidize up to $416 of the physician's trip expenses.
- The amount of the trip subsidy will be affected by other expenditures the pharmacy has made on behalf of the physician during the year.

What a Pharmacy Can Spend on (or Pay to) a Physician

- While the Stark non-monetary compensation exception applies to expenditures on behalf of a physician, the exception does not apply to expenditures on behalf of the physician's staff.
- In fact, Stark does not apply to the physician's staff. Expenditures on behalf of the physician's staff must be examined in light of the AKS.

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What a Pharmacy Can Spend on (or Pay to) a Physician

- Separate from furnishing gifts and entertainment, and subsidizing trips, the pharmacy can pay the physician for legitimate services. The arrangement needs to (i) comply with a Stark exception and (ii) comply with, or substantially comply with, a safe harbor to the AKS.

Sham Education Programs: Guidance From A Criminal Case

Criminal Case

- A federal grand jury in Connecticut indicted Jeffrey Pearlman, a former sales manager for Insys Therapeutics, Inc.
- According to a Department of Justice ("DOJ") statement, Mr. Pearlman allegedly used bogus educational events as a "cover" for paying kickbacks to physicians in exchange for their increased prescriptions of Subsys®, a spray version of the opioid fentanyl.

Criminal Case

- The DOJ alleges that Mr. Pearlman arranged sham "speaker programs," which were billed as gatherings of physicians to educate them about Subsys®.
- In reality, according to the DOJ, the events - usually held at high-end restaurants - mostly consisted of friends and co-workers who lacked the ability to prescribe the drug, and there was no educational component.

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Criminal Case

- According to the DOJ, the "speakers" were physicians who were paid fees ranging from $1000 to several thousand dollars to attend the dinners.
- The indictment says that these payments were kickbacks to the speakers "who were prescribing large amounts of Subsys® and to incentivize those [physicians] to continue to prescribe Subsys® in the future."

Criminal Case

- Here are the "takeaways" from this criminal case:
  - Before the pharmacy provides "anything of value" to a physician, the pharmacy needs to consult with a health care attorney to ensure that the arrangement does not violate the AKS or Stark.
  - "Anything of value" can be a payment of money, it can be a trip, it can be a set of golf clubs, it can be tickets to a Springsteen concert, and it can be services that the physician would normally have to perform himself.

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Criminal Case

- "Takeaways" (cont'd):
  - It is permissible for a pharmacy to enter into a Medical Director Agreement ("MDA") with a physician who also refers Medicare patients to the pharmacy. The MDA needs to comply with the Personal Services and Management Contracts safe harbor to the AKS and with the Stark Personal Services exception. Among other requirements, (i) the MDA must be in writing and have a term of at least one year, (ii) the physician must render valuable (not "made up") services to the pharmacy, (iii) the compensation paid by the pharmacy to the physician must be fixed one year in advance, and (iv) the compensation must be the fair market value ("FMV") equivalent of the physician's services.

Criminal Case

- "Takeaways" (cont'd):
  - If a pharmacy is going to pay a physician to put on an education program, then it must pass the "smell test." The physician must be qualified to make the presentation, the physician must actually make the presentation, the presentation topic must be substantive and timely, the audience must be in the position of benefitting from the presentation, and the compensation to the physician must be FMV.

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Criminal Case

- "Takeaways" (cont'd):
  - If a pharmacy submits a claim to a government program that arises out of an improper arrangement with a physician, then the claim is "tainted" and becomes a false claim. Penalties under the FCA can be massive.

Sham Clinical Studies

Sham Clinical Studies

- "You can put lipstick on a pig, but it is still a pig."
- Under the typical sham clinical study program, the physician refers patients to the pharmacy. The pharmacy dispenses a compounded medication (e.g., pain cream) to the patient.
- The physician "collects data" from the patient (e.g., "After applying the pain cream, from a scale of one to ten, what is your pain level?").

Sham Clinical Studies

- The physician shares the information with the pharmacy. The information is rudimentary, the pharmacy does not need it, and it is the same information that the pharmacy can secure itself.
- The pharmacy pays the physician $___ per patient per month.
- In some clinical studies physicians have been known to make about $80,000 over a six month period.
- These "sham" studies violate the AKS.

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Sham Clinical Studies

- The pharmacy may argue that it is not paying for referrals, but is paying for legitimate services.
- Remember the statement about "putting lipstick on a pig." A number of courts have enumerated the "one purpose" test. This test states that if one purpose behind a payment is to induce referrals, then the AKS is violated even if the principal purpose is to pay for legitimate services.
- In a sham clinical study, there is no question that "one purpose" behind the payments is to induce referrals. In fact, the primary purpose of the payments is to induce referrals.

Sham Clinical Studies

- Assume that the physician refers no patients to the pharmacy who are covered by a government health care program.
- The pharmacy will need to look at its state anti-kickback statutes.

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Sham Telehealth Arrangements

Sham Telehealth Arrangements

- Pharmacies are aggressively engaged in marketing and it is not uncommon for a pharmacy to dispense drugs to patients residing in multiple states.

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Sham Telehealth Arrangements

- When a pharmacy is marketing to patients in multiple states, the pharmacy may run into a "bottleneck."
- This involves the patient's local physician. A patient may desire to purchase a prescription drug from the out-of-state pharmacy but it is too inconvenient for the patient to drive to his physician's office.

Sham Telehealth Arrangements

- Or if the patient is seen by his local physician, the physician may decide that the patient does not need the drug and so the physician refuses to sign a prescription.
- Or even if the physician does sign a prescription, he may be hesitant to send the order to an out-of-state pharmacy.

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Sham Telehealth Arrangements

- In order to address this challenge, some pharmacies are entering into arrangements that will get them into trouble.
- This has to do with "telehealth" companies.

Sham Telehealth Arrangements

- A typical telehealth company has contracts with many physicians who practice in multiple states.
- The telehealth company contracts with, and is paid by (i) self-funded employers that pay a membership fee for their employees, (ii) health plans, and (iii) patients who pay a per visit fee.

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Sham Telehealth Arrangements

- Where a pharmacy will find itself in trouble is when it aligns itself with a telehealth company that is not paid by employers, health plans and patients – but rather – is directly or indirectly paid by the pharmacy.

Sham Telehealth Arrangements

- Here is an example: *pharmacy purchases leads from a marketing company … the marketing company sends the leads to the telehealth company … the telehealth company contacts the leads and schedules audio or audio/visual encounters with physicians contracted with the telehealth company … the physicians issue prescriptions for drugs…the telehealth company sends the prescriptions to the pharmacy … the marketing company pays compensation to the telehealth company for its services in contacting the leads and setting up the physician appointments … the telehealth company pays the physicians for their patient encounters … the pharmacy mails the drug to the patient … the pharmacy bills (and gets paid by) a government program.*

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Sham Telehealth Arrangements

- There can be a number of permutations to this example, but you get the picture.
- **Stripping everything away, the pharmacy is paying the ordering physician.**
- To the extent that a pharmacy directly or indirectly pays money to a telehealth physician, who in turn writes a prescription for drugs that will be dispensed by the pharmacy, the arrangement will likely be viewed as remuneration for a referral (or remuneration for "arranging for" a referral).

Sham Telehealth Arrangements

- If the payer is a federal health care program, then the arrangement will likely violate the AKS.
- If the payer is the state Medicaid program, then the arrangement will likely violate both the AKS and the state anti-kickback statute.
- If the payer is a commercial insurer, then the arrangement may violate a state statute.

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Sham Telehealth Arrangements: Criminal "Takedown"

Sham Telehealth Arrangements: Criminal "Takedown"

- Over the last four years, DME suppliers, lead generation companies ("LGCs"), and telehealth companies engaged in an arrangement that violated criminal laws. This arrangement is as follows:
  - The DME supplier purchases leads from an LGC. The DME supplier pays money to the LGC.
  - The LGC transfers the leads to a telehealth company. The LGC pays money to the telehealth company.
  - The telehealth company sets up telephone encounters between the leads and telehealth physicians. The telehealth company pays the physicians for their telephone encounters with the leads.

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Sham Telehealth Arrangements: Criminal "Takedown"

- Arrangement (continued):
  - The physicians write orders for orthotics (mostly back braces). The orders end up going back to the DME supplier that started the process by purchasing the leads.
  - The DME supplier furnishes the brace to the lead and then bills Medicare.
- As will be discussed in subsequent slides, what happened to the DME suppliers is an important lesson for pharmacies.

Sham Telehealth Arrangements: Criminal "Takedown"

- On April 9, 2019 the Department of Justice ("DOJ") issued a Press Release entitled **Federal Indictments and Law Enforcement Actions in One of the Largest Health Care Fraud Schemes Involving Telemedicine and Durable Medical Equipment (DME) Marketing Executives Results in Charges Against 24 Individuals Responsible for Over $1.2 Billion in Hundreds of Thousands of Elderly and/or Disabled Patients Nationwide and Abroad Lured into Criminal Schemes; Center for Program Integrity, Center for Medicare Services, Takes Administrative Action Against 130 DME Companies That Submitted Over $1.7 Billion.** The Press Release states, in part:

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Sham Telehealth Arrangements: Criminal "Takedown"

- *One of the largest health care fraud schemes investigated by the FBI and the U.S. Department of Health and Human Services Office of the Inspector General (HHS-OIG) and prosecuted by the Department of Justice resulted in charges against 24 defendants, including the CEOs, COOs and others associated with five telemedicine companies, the owners of dozens of durable medical equipment (DME) companies and three licensed medical professionals, for their alleged participation in health care fraud schemes involving more than $1.2 billion in loss, as well as the execution of over 80 search warrants in 17 federal districts.*

Sham Telehealth Arrangements: Criminal "Takedown"

- *In addition, the Center for Medicare Services, Center for Program Integrity (CMS/CPI) announced today that it took adverse administrative action against 130 DME companies that had submitted over $1.7 billion in claims and were paid over $900 million.*

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Sham Telehealth Arrangements: Criminal "Takedown"

- *The charges announced today target an alleged scheme involving the payment of illegal kickbacks and bribes by DME companies in exchange for the referral of Medicare beneficiaries by medical professionals working with fraudulent telemedicine companies for back, shoulder, wrist and knee braces that are medically unnecessary. Some of the defendants allegedly controlled an international telemarketing network that lured over hundreds of thousands of elderly and/or disabled patients into a criminal scheme that crossed borders, involving call centers in the Philippines and throughout Latin America.*

Sham Telehealth Arrangements: Criminal "Takedown"

- *The defendants allegedly paid doctors to prescribe DME either without any patient interaction or with only a brief telephonic conversation with patients they had never met or seen. The proceeds of the fraudulent scheme were allegedly laundered through international shell corporations and used to purchase exotic automobiles, yachts and luxury real estate in the United States and abroad.*

Sham Telehealth Arrangements: Criminal "Takedown"

- *"These defendants — who range from corporate executives to medical professionals — allegedly participated in an expansive and sophisticated fraud to exploit telemedicine technology meant for patients otherwise unable to access health care," said Assistant Attorney General Benczkowski. "This Department of Justice will not tolerate medical professionals and executives who look to line their pockets by cheating our health care programs. I commend the Criminal Division prosecutors and our partners from U.S. Attorney's Offices and law enforcement agencies across the country for their unrelenting efforts to stop this alleged fraud before more money was stolen from American taxpayers."*

Sham Telehealth Arrangements: Criminal "Takedown"

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- *According to allegations in court documents, some of the defendants obtained patients for the scheme by using an international call center that advertised to Medicare beneficiaries and "up-sold" the beneficiaries to get them to accept numerous "free or low-cost" DME braces, regardless of medical necessity. The international call center allegedly paid illegal kickbacks and bribes to telemedicine companies to obtain DME orders for these Medicare beneficiaries. The telemedicine companies then allegedly paid physicians to write medically unnecessary DME orders.*

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Sham Telehealth Arrangements: Criminal "Takedown"

- *Finally, the international call center sold the DME orders that it obtained from the telemedicine companies to DME companies, which fraudulently billed Medicare. Collectively, the CEOs, COOs, executives, business owners and medical professionals involved in the conspiracy are accused of causing over $1 billion in loss.*
- There are several lessons for pharmacies to learn from the government's actions:

Sham Telehealth Arrangements: Criminal "Takedown"

- **If it seems to be "too good to be true," then it is –** When an LGC approaches a pharmacy and says: "Pay me money and I will deliver to you physician prescriptions for drugs," then it truly sounds too good to be true. In the DME criminal takedown, too many DME suppliers entered into these arrangements without engaging in at least minimal due diligence. With some minor digging, the DME supplier would discover that the original source of money paid to the telehealth physician comes from the supplier. Pharmacies have entered into these types of sham telehealth arrangements. These pharmacies would be wise to heed the warning arising from the criminal takedown of DME suppliers.

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Sham Telehealth Arrangements: Criminal "Takedown"

- **"Code Killers" and the Repetition of History –** Humans are "creatures of habit." They repeat their behavior. This is evident in what I call the phenomenon of "code killers." Over the decades, there has always been a handful of pharmacies that gravitate towards the "quick buck." We saw this with compounded pain and scar creams. The pharmacies that play this game are called "code killers." Their actions result in large spikes in claims submissions under particular codes…resulting in the government (and commercial third party payors) reacting by making it difficult (if not impossible) to continue billing under the codes.

Sham Telehealth Arrangements: Criminal "Takedown"

- **Spike in Claims Submissions Will Garner Attention –** If the claims submissions by a pharmacy "spikes," then the pharmacy will be looked at. This is true regardless of whether the spike occurs with products that the pharmacy has historically provided or with a new product line. And this is true regardless of whether the pharmacy is in Dallas, TX … or is in Muleshoe, TX.

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Sham Telehealth Arrangements: Criminal "Takedown"

- **For a Telehealth Company to be Legitimate, its Money Needs to Come From Patients, their Insurance Companies, and their Employers –** It is time consuming, and it takes a great deal of capital investment, to set up a legitimate telehealth company. This is because its money must initially come from its investors and from bank loans…after which the telehealth company will start cash flowing from payments (e.g., subscription agreements) from patients, their employers and their insurance companies. A "sham" telehealth company will bypass all of the hard work involved in setting up a legitimate operation and, instead, fund itself from the health care providers (pharmacies, DME suppliers, labs, etc.) that receive the telehealth orders. In the old Charles Schwab commercial, the voiceover says: "You can put lipstick on a pig…but it is still a pig." There is simply no getting around the fact that money must come from the patient, the patient's insurance company, or the patient's employer.

Sham Telehealth Arrangements: Criminal "Takedown"

- **It is the Pharmacy … Not the LGC … That is on the Firing Line –** Pharmacies have licenses, permits, NPIs, and provider numbers. LGCs have none of these. LGCs are in the business of making money. They do this by selling leads. LGCs do not have to worry about losing a license or facing a payment suspension. At the end of the day, it is the pharmacy that is on the firing line if an arrangement is not legally compliant. Certainly, the LGC can be liable, but it is the pharmacy that is the "low hanging fruit."

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Sham Telehealth Arrangements: Criminal "Takedown"

- **John Houseman's Famous Quote –** A generation ago, there was a Smith Barney television commercial. Smith Barney was a New York investment firm. The spokesman was John Houseman whose claim to fame was playing a cantankerous Harvard Law School professor in the movie by the name of "The Paper Chase." Houseman was old, wore a bow tie, and looked intimidating. He stared at the camera and said: "At Smith Barney, we make money the old fashioned way. We earn it." The message was that Smith Barney was not a "fly by night" investment shop that would end up blowing up and losing money for its clients. The message was that Smith Barney plays by the book, it can be trusted, and it will always be there for its clients. So what does this have to do with the criminal investigation into the telehealth space? It is this: *I would rather see a pharmacy make less money and sleep well at night…than make a lot of "quick money" and lie awake at night.*

THE END

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