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Former U.S. prosecutor discusses ways to combat Medicare fraud

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Before Stephen C. Lee joined Benesch Friedlander Coplan & Aronoff LLP, he was an assistant U.S. attorney in Chicago where he helped prosecute several high-profile Medicare fraud cases.

Investigations by Lee and a group of prosecutors led to a guilty plea by the former chief executive officer of Mobile Doctors, a company that would arrange patient home visits and contract with doctors who would perform the visits.

In his guilty plea, the CEO, Dike Ajiri, admitted to personally altering patient files in order to fraudulently bill patient visits to Medicare for the highest amount possible. Mobile Doctors was forced to close and Ajiri was sentenced to 15 months in prison for his role in the \$1.8 million fraud scheme.

The investigations also resulted in the conviction of another Mobile Doctors physician, Banio Koroma, who was sentenced to 40 months in prison for his role in falsely certifying patients as being confined to their homes.

Lee, a Benesch partner, said the issue of Medicare fraud involving home health agencies has been a major problem in Chicago.

"The big problem is that there are a lot of home health agencies in Chicago that basically are charging Medicare and making it look like they are providing services to patients who are confined to the home and need that all-intensive skilled nursing services, but are actually just sending nurses by to do routine checkups, like checking people's blood pressure and vital signs. Because Medicare believes and trusts that people are submitting accurate claims, Medicare actually pays a huge amount of money for those routine checkups," he said.

Last month, Lee joined Benesch where he is a member of white-collar government investigations and regulatory compliance practice group.

The Daily Law Bulletin spoke to Lee about his experience prosecuting Medicare fraud and why it remains a major issue here.

This interview has been edited for length and clarity.

CDLB: *Can you talk about some of the reasons why health-care fraud, especially among home health-care agencies, has been such a big problem in Chicago?*

Lee: I think one of the issues here is that there are a lot of home health-care agencies in Chicago. There's probably more in the Chicago area than the actual market can support ... You see other states with similar populations or even bigger populations have fewer home health agencies than in Illinois ... I do think for some home health-care agencies, some of them find themselves getting into a business and then faced with a situation where the only way they can stay in business is to commit some type of fraud or pay some kind of kickbacks.

Of course, that's not an excuse but I think that's how some people fall into it. I think another big problem is that because a lot of people were mistrained when they first started working in home health, they were taught, "You fill out the charts this way," and then they just keep doing it.

Unfortunately, some people haven't had their wake-up call or they've stuck their heads in the sand. I think part of the problem is that some people had been doing it for a long time and ... They have an incentive to stick their heads in the sand and keep doing it.

I do think one of the big factors in Chicago, in terms of home health, is because of the rise of companies that exist to support home health. For example, Mobile Doctors. A big part of what Mobile Doctors did was get doctors to improperly certify patients for the home health care agencies. That was a big part of how they got their patients.

CDLB: *Is there some mechanism to catch or prevent doctors from improperly certifying patients?*

Lee: At every trial, we would call someone from Medicare and they would explain that Medicare is a system of trust. Medicare gets thousands and millions of claims every single day. Medicare can't double check that.

When someone who is enrolled with Medicare, a doctor or a company, and promised to follow the rules and submit accurate claims, when they submit claims that patient John Doe is confined to the home and needs skilled nursing, Medicare has to process that claim pretty quickly and is generally going to assume that that's accurate ...

As we all get better at catching these things, there are ways to raise more red flags ... What I did in my cases was to poke holes in that kind of stuff. For example, this doctor says, 'John Doe is confined to the home.' Well, John Doe is going to an office visit at the same time so maybe that's a sign that John Doe really isn't confined to the home ... There are ways to do it and we've done it at various trials but again part of the problem is the volume.

Medicare has to process so much information ... There is this huge amount of trust placed in doctors and home health-care providers, and it's always a shame when they violate that trust.

CDLB: *Do you think the moratorium on home health-care agencies has been effective? (In 2013, the Centers for Medicare & Medicaid Services imposed a moratorium on new home health-care agencies in certain Illinois, Florida and Texas counties. It was expanded to cover the entire state in 2016 as well as Michigan, Pennsylvania and New Jersey. The Illinois ban was lifted in February of this year.)*

Lee: I think there are probably too many home health-care agencies in the Chicago area to support the market, the actual need, especially when you look at other states ...

I totally get the point of the moratorium. And it probably did help contain some of the problem. But one thing that the moratorium didn't quite do, and maybe it wasn't designed to do,

was really get at the root problem, which is that there are a lot of people who were trained improperly over the years in terms of doing home health.

While the moratorium probably kept the problem from getting worse, it didn't get to the training issues or the complicit doctors. It didn't get to those parts of the problem, which I think are part of why the problems continue to be big ... I think it might have been worse if the moratorium hadn't happened but I think that correcting a lot of the bad behavior by doctors and nurses — that is going to be more effective in the long run in addressing the problem.

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