Durable Medical Equipment Fraud

Durable Medical Equipment Defined

Durable Medical Equipment (commonly referred to as "DME") is defined by the Federal Government as "equipment which can withstand repeated use," and "is primarily and customarily used to serve a medical purpose." DME is generally not useful to a person in the absence of an illness or injury, and is appropriate for use in the home. Under this broad definition, DME can include a vast array of items such as walkers, oxygen equipment, wheelchairs, heart valves, artificial joints, blood glucose test strips, and medical beds.

For certain types of DME to be covered by a government health program, a Certificate of Medical Necessity must be signed by a treating physician. Also, some types of DME must be approved by the FDA before they can be marketed legally to consumers depending on the level of risk the product poses to consumers. DME is subject to both FDA regulatory requirements and health care program laws. Failure to comply with either may give rise to liability under the False Claims Act ("FCA").

Durable Medical Equipment Fraud in Violation of the FCA

Suppliers and distributors of DME have violated the FCA in a myriad of ways. Unfortunately, sometimes their fraudulent acts cause patient harm. Common areas of fraud prosecuted under the FCA in recent years include the following:

(a) selling or distributing an unapproved or "off label" product;
(b) falsifying patient information and diagnoses;
(c) billing for medically unnecessary equipment;
(d) billing the government for equipment that was never provided;
(e) billing for services that never was performed;
(f) paying kickbacks to providers and/or patients to induce them to prescribe the product;
(g) billing the government for equipment that was not actually provided;
(h) double billing;
(i) entering into improper financial relationships with physicians who refer patients;
(j) paying kickbacks to physicians for referrals;
(k) making misleading statements about the product's safety or effectiveness;
(l) prescribing the DME when it was not reasonable and necessary for the diagnosis of the patient;
(m) billing for equipment provided to patients who do not qualify for the equipment; and
(n) Providing defective equipment;

Examples of a Whistleblower recovery in Durable Medical Equipment Fraud Cases alleging violations of the FCA:

The **whistle-blower,** a former senior quality control analyst at the subsidiary, **received a Relator Fee of approximately $5.6 million** of the recovered amount from an approximately **$33.2 million Settlement** in March of 2018, in a case involving a medical device manufacturer with Alere agreeing to resolve claims that its subsidiary caused hospitals to submit false claims to government health care programs by knowingly selling materially unreliable point-of-care diagnostic testing devices. *See* Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Alere to Pay U.S. $33.2 Million to Settle False Claims Act Allegations Relating to Unreliable Diagnostic Testing Devices (Mar. 23, 2018), https://www.justice.gov/opa/pr/alere-pay-us-332-million-settle-false-claims-act-allegations-relating-unreliable-diagnostic.

A **whistleblower**, a physician who worked for various durable medical equipment companies, received a **Relator Fee** of **$5.38 million from a $34.8 million settlement** in a case in March of 2016, when Respironics agreed to resolve allegations that it provided free call center services to durable medical equipment suppliers to induce the suppliers to purchase the company's sleep apnea masks. . *See* Press Release, Office of Pub. Affairs, U.S. Dep't of Justice, Respironics to Pay $34.8 Million for Allegedly Causing False Claims to Medicare, Medicaid and Tricare Related to the Sale of Masks Designed to Treat Sleep Apnea (Mar. 23, 2016),https://www.justice.gov/opa/pr/respironics-pay-348-million-allegedly-causing-false-claims-medicare-medicaid-and-tricare.

Blow the Whistle on Durable Medical Equipment Fraud

Individuals with knowledge of fraud committed by Durable Medical Equipment companies may be able to blow the whistle on this kind of fraud using the FCA, the TMFPA and other whistleblower reward programs. Whistleblowers play a critical role in bringing this type of fraud to light and holding wrongdoers accountable when they try to cheat the system.

To talk with me about your Durable Medical Equipment fraud case, call my Dallas law offices at 214-505-0097 or contact me online. Consultations with a Dallas County Durable Medical Equipment Company attorney are free and confidential. I handle these types of cases on a contingent fee basis, meaning you owe me no legal fees or expenses unless I obtain a recovery for you.