



NATIONAL ASSOCIATION OF MEDICAID FRAUD CONTROL UNITS

\$49 MILLION SETTLEMENT WITH BIOTECH TESTING COMPANY PROGENITY INC.

The National Association of Medicaid Fraud Control Units (NAMFCU) announced on July 27, 2020 that 46 states have joined with the federal government to settle allegations against Progenity, Inc. (“Progenity”), a San Diego-based biotechnology company that provides molecular and diagnostic tests, and has reached an agreement in principle along with numerous other states. The settlement will resolve allegations that Progenity fraudulently billed federal healthcare programs for prenatal tests and provided kickbacks to physicians to induce them to order Progenity tests for their patients. Under the settlement, Progenity will pay the states and the federal government \$49 million for claims pertaining to various federal healthcare programs, \$29,189,101 million of which resolves claims relating to Medicaid (\$13,150,684 million of which is the total recovery for the state Medicaid programs).

The settlement resolves allegations that Progenity overbilled Medicaid by fraudulently using a billing code to seek reimbursement for noninvasive prenatal tests that screen for genetic disorders and abnormalities when this code misrepresented the tests provided. The settlement also resolves allegations that Progenity provided illegal kickbacks by: (1) providing excessive “draw fees” that exceeded fair market value for blood specimens collected for Progenity tests; (2) providing meals and happy hours for physicians and their staff that often involved little or no educational content; and (3) improperly reducing or waiving patient coinsurance and deductible payments. Progenity makes extensive admissions regarding the company’s conduct with respect to both the fraudulent billing and kickback claims. The settlement arises in part from a private whistleblower lawsuit that had previously been filed under seal in the United States District Court for the Southern District of New York under the federal False Claims Act and the named plaintiff states’ respective false claims/anti-fraud statutes, which alleged that Progenity engaged in illegal kickback schemes.

A NAMFCU Team participated in the investigation and the settlement negotiations with Progenity on behalf of the states. The Team included representatives from the Offices of the Attorneys General for the states of New York, Colorado, Michigan, Ohio, Texas, and Washington.