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DOJ's Health Care Enforcement Initiative Is Still Going Strong

By **Melissa Jampol and George Breen** (July 19, 2018, 2:33 PM EDT)

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On Thursday, June 28, 2018, the U.S. Department of Justice in connection with the U.S. Department of Health and Human Servicesand other law enforcement agencies announced the results of their ninth annual health care fraud "takedown." The "take down" is an aggregation of criminal, civil and administrative health care-related actions brought over the past few weeks by Main Justice's ten Medicare fraud strike force units, 46 different U.S. Attorney's Offices throughout the country, and 36 state Medicaid fraud control units.[1]

Like other prior years, the DOJ proclaimed that this year's takedown was the "largest ever." However, this year's was substantially larger than prior years, demonstrating the results of increasing coordination by state and local authorities to combat health care fraud and the continuing emphasis on data analytics to investigate cases of suspected health care fraud. While last year's takedown resulted in more than 400 arrests, this year's resulted in a significant jump to 601 people charged, including 76 doctors, 23 pharmacists and 19 nurses, as well as other medical professionals.[2] While last year's takedown resulted in accountability for $1.3 billion in health care fraud, this year DOJ proclaimed that "collectively, the doctors, nurses, licensed medical professionals, health care company owners and others charged are accused of submitting a total of over $2 billion in fraudulent billings."[3] As set forth below, the major highlights of this year's takedown reveal that DOJ and its law enforcement partners are sticking to many of the same enforcement areas that were central to last year's takedown and which are highlighted in the current HHS-OIG workplan.[4]

Key Takeaways of This Year's Takedown

Continued Focus on Opioids

During this year's takedown, 162 individuals, including 76 doctors, were charged with opioid-related crimes, which was an increase from 2017's announcement of 120 people charged with opioid-related offenses, firmly following through on Attorney General Jeff Sessions' focus on opioid-related crimes. This year, not only traditional pill mill cases were charged in the take down, but at least two cases involved health care fraud committed by those operating a sober living facilities and substance abuse treatment centers, some of which overlapped with urine-testing schemes. See the section on the travel ban below.

In one case charged in the Southern District of Florida,[5] an owner, a CEO and two patient brokers of a sober living facility/drug treatment center were charged with a kickback scheme to illegally recruit patients in an attempt defraud health care benefit programs for widespread fraudulent urine testing that was not medically necessary. The government alleges that the facility submitted more than $58.2 million in claims for the substance abuse treatment services.

- In Michigan, the U.S. Attorney's Office in conjunction with the Detroit Medicare fraud strike force unit charged a physician who they stated was the top prescriber in the state of Michigan from 2016-2017 of oxycodone 30mg (who allegedly prescribed in excess of 2.2 million dosage units of controlled substances, including medically unnecessary prescriptions for fentanyl, oxycodone and oxymorphone), with a kickback scheme involving three diagnostic laboratories.[6]

- Notably, on the same day as the health care fraud take down, the U.S. Department of Health and Human Services' Office of Inspector General released a report focusing on Medicare Part D beneficiary utilization of opioids, reiterating the severity of the current crisis and noting that "opioid abuse and overdose deaths are at epidemic levels in the United States."[7] There is no doubt that significant resources will continue to be devoted to opioid-related investigations and prosecutions as well as on clinical laboratories.

Continued Focus on Pharmacies and Prescription Drug Compounding Schemes:

A variety of different pharmacy-related health care fraud schemes were charged by the DOJ in this year's takedown. In particular, the DOJ continued its "aggressive"[8] emphasis, in conjunction with the Defense Criminal Investigative Service, HHS-OIG and the Federal Bureau of Investigation, on prescription drug compounding schemes.

- In one such case, in the Middle District of Florida,[9] (a district that has been in the forefront in charging numerous individuals and pharmacies over the past three years for prescription drug compounding-related offenses), a pharmacist and a physician assistant were charged with submitting and causing the submission of false and fraudulent claims to Medicare and Medicare PBMs by two pharmacies that they controlled for compounded drugs that were not medically necessary, and in some cases without examining beneficiaries. The government also alleged that the pharmacist and his co-conspirators paid kickbacks to the physician assistant for the prescriptions to beneficiaries.

- Similarly, in the Southern District of Texas, owners (including a physician) of a pharmacy management company, who also controlled several mail-order compounding pharmacies around Houston, Texas, and controlled a "network of hundreds of Sales Representatives across the country, including Texas, Ohio, Michigan, Massachusetts, Nevada, and elsewhere," were charged with submitting false and fraudulent claims to Medicare, TRICARE and other government and commercial health care benefit programs that were often medically unnecessary, based on invalid prescriptions or that were never provided.[10] The government also alleged that this scheme involved the prescription of the compounded drugs through bribes and kickbacks, "many of which were in violation of the Anti-Kickback Statute."

- In the Central District of California, a pharmacy owner was charged with submitting false and fraudulent claims for drugs, which falsely represented that a pharmacy dispensed prescription drugs to Medicare Part D beneficiaries when the defendant did not purchase the drugs from prescription drug wholesalers, did not dispense the drugs to the Medicare Part D beneficiaries and falsified documents.[11]

Continued Focus on Home Health Care

As it has for the past few years, fraud in home health care programs continues to be a priority for the U.S. Department of Justice. As part of the takedown, for example:

- The operator of a Dallas physician house call practice who routinely wrote scripts for home healthcare was arrested as part of the takedown.[12] The physician house call practice, Life Spring Housecall Physicians Inc., is alleged to have generated hundreds of fraudulent home health orders and certifications for multiple home health agencies in the DFW area. Life Spring's allegedly false documents led to home health agencies billing Medicare approximately $2.5 million in fraudulent claims.

- In the Northern District of Illinois,[13] the owners of a licensed provider of home health care services were charged with paying approximately $30,000 in cash kickbacks and bribes to a physician to induce referrals of Medicare beneficiaries ($300 for each patient) and recertification of the beneficiaries ($200 for each).

- Similarly, in another case charged in the Northern District of Illinois,[14] an owner of a home health agency and a "purported employee" of the agency, were charged with conspiring to submit false and fraudulent claims to the U.S. Department of Labor, Office of Workers' Compensation Programs for home aide services that were medically unnecessary and never provided, including representing to OWCP that the employee was providing a patient with 24-hour a day, 7 day a week care in the patients home.

Continued Emphasis on Enforcement and Providers

This year's DOJ press release noted that "virtually every health care fraud scheme requires a corrupt medical professional to be involved in order for Medicare or Medicaid to pay the fraudulent claims. Aggressively pursuing corrupt medical professionals not only has a deterrent effect on other medical professionals, but also ensures that their licenses can no longer be used to bilk the system." As such, HHS continues to use its administrative powers to suspend health care professionals. Last year for the first time as part of the health care fraud take down, the DOJ announced that HHS had initiated suspension actions against 295 providers. Similarly, this year, in conjunction with the take down, HHS announced a notable increase in suspension actions: from July 2017 to the present, it excluded 2,700 individuals from participation in Medicare, Medicaid and all other federal health care programs, including 587 providers excluded for conduct related to opioid diversion and abuse (67 doctors, 402 nurses and 40 pharmacy services). All signs are pointing to an increasing emphasis by HHS in using suspensions as a way to attempt to combat the opioid crisis and shut down pill mills at their sources.[15]

Use of the Travel Act As a Prosecution Tool

Recently, we have seen select federal indictments employing the Travel Act, 18 U.S.C. § 1952, in criminal prosecutions of alleged health care fraud, in cases such as the District of New Jersey's prosecution of

Biodiagnostic Laboratory Services LLC of Parsippany, New Jersey, and the recent indictment of multiple individuals associated with the Forest Park Medical Center of Dallas, Texas, in the Northern District of Texas. The Travel Act is a federal criminal statute that forbids travel in interstate or foreign commerce, or use of the mail or any facility in interstate or foreign commerce, with the intent to distribute the proceeds of any unlawful activity. It also includes attempts to perform such activity. "Unlawful activity" is defined to include bribery, as defined in state law. This means if any funds solicited or received through what could be considered "bribery" under a given state's law, are intentionally distributed interstate using the mail or via a wire transfer, the Travel Act may apply. In this way, the Travel Act is predicated on state bribery statutes, allowing the DOJ to use them as a hook to prosecute health care fraud.

- As part of the health care fraud takedown, the Southern District of Florida unsealed an indictment charging violations of the Travel Act, among other offenses.[16] The defendants included the owner, the CEO, and patient brokers of a sober home and substance abuse treatment center. In addition to other fraudulent behavior, the defendants are accused of paying kickbacks and bribes in the form of free or reduced rent, payment for travel and other benefits to insured individuals who agreed to use the defendants' services so the defendants could bill the services to certain insurance plans. If patients did not attend their sessions or provide samples for testing, defendants allegedly instructed their employees to forge and falsify documents. The defendants also allegedly paid patient recruiters to refer patients for services.

The focus on urine testing and laboratories coincides with May's publication by the Healthcare Fraud Prevention Partnership white paper, entitled "Examining Clinical Laboratory Services," which provides an overview of certain practices raising fraud and abuse concerns involving clinical laboratory services and providers.[17] Indeed, the white paper describes a "broad consensus" among its partners on the need to do more to combat potential fraud and abuse in laboratory billing, so expect to see continued enforcement in this area.

There is no doubt that the DOJ, along with its law enforcement partners, will continue to prioritize health care fraud cases. While last year, the department noted in its press release, that for every dollar spent on health care-related investigations, more than five dollars has been recovered, that number slipped to four dollars this year. However, despite the monetary dip, there is no doubt that health care fraud remains a lucrative profit center for the DOJ.

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[1] 97 defendants were charged by state Medicaid Fraud Control Units with defrauding the Medicaid program out of over $27 million. https://www.justice.gov/opa/pr/national-health-care-fraud-takedown-results-charges-against-601-individuals-responsible-over

[2] https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-announcing-national-health-care-fraud-and

[3] https://www.justice.gov/opa/pr/national-health-care-fraud-takedown-results-charges-against-601-individuals-responsible-over

[4] https://oig.hhs.gov/reports-and-publications/workplan/index.asp

[5] United States v. Eric Snyder, Paul R. Materia, Joseph Lubowitz, and Christopher Fuller, Crim. No. 18-80111 (RLR) (S.D.Fl.).

[6] United States v. Francisco Patino, Crim. No. 18-20451 (VAR)(E.D.Mich.)

[7] "Opioids in Medicare Part D: Concerns about Extreme Use and Questionable Prescribing" OEI-02-0050, available at https://oig.hhs.gov/oei/reports/oei-02-17-00250.pdf

[8] https://www.justice.gov/opa/pr/national-health-care-fraud-takedown-results-charges-against-601-individuals-responsible-over

[9] United States v. Thu Van Le, a/k/a "Tony Le," Chau Nguyen, a/k/a "Cindy Le," Truong Giang Le, a/k/a "Ted Le," Chanh Van Le, a/k/a "Kevin Le," Nha Le Tuan Troung, and Jeffrey Lawrence, a/k/a "Jey," Crim. No. 18-00119 (DOC) (C.D.Fl.).

[10] United States v. Brian Swiencinski, Scott Breimeister, and Vladimir Redko, Crim. No. 18-00368 (S.D.Tx.).

[11] United States v. Armen Pogossian, Crim. No. 18-00360 (PA)(C.D.Ca.).

[12] United States v. Nehaj Rizvi (N.D. Tx).

[13] United States v. Michael Khomutov, Julia Khomutov, and Yevgeny Tsyrulnikov, Crim. No. 18-00400(N.D. Ill.).

[14] United States v. Chante Carrothers and Ella Garner, Crim. No. 18-00374 (N.D. Ill.).

[15] Notably, since July 2017, DEA has issued 16 Immediate Suspension Orders, 74 Orders to Show

Cause, and received 736 Surrenders for Cause for violations of the Controlled Substances Act. https://www.justice.gov/opa/page/file/1075961/download#June%2028,%202018%20National%20Health%20Care%20Fraud%20and%20Opioid%20Takedown%20By%20the%20Numbers.

[16] United States v. Eric Snyder, Paul R. Materia, Joseph Lubowitz, and Christopher Fuller, Crim. No. 18-8011(RLR) (S.D.Fl.).

[17] Healthcare Fraud Prevention Partnership, Examining Clinical Laboratory Services: A Review by the Healthcare Fraud Prevention Partnership (May 2018), available at https://hfpp.cms.gov/Hfpp-White-Papers/HFPP-Clinical-Lab-Services-White-Paper.pdf.