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# Report on Medicare Compliance Volume 28, Number 14. April 15, 2019 DOJ Wins Two Big Fraud Trials; Execs, MDs Face Long Prison Terms

By Nina Youngstrom

Over a four-day period in early April, the Department of Justice (DOJ) announced the conviction of seven executives and physicians embroiled in a Texas hospital fraud case, won a guilty verdict in a $1.3 billion skilled nursing facility (SNF) fraud in Florida, and claimed they dismantled one of the largest Medicare fraud schemes ever, which involves telemedicine and durable medical equipment (DME). These are monster cases that implicate the Anti-Kickback Statute or other laws, including the Travel Act, a Kennedy-era law that comes from the Racketeering chapter of the federal criminal code and is being used to prosecute kickbacks.

In Dallas, the executives, physicians and a nurse at Forest Park Medical Center were found guilty April 9 after a seven-week bribery trial, the U.S. Attorney's Office for the Northern District of Texas said. In Florida, Philip Esformes, the owner of SNFs and assisted living facilities, was convicted April 5 after an eight-week trial in the largest health fraud scheme ever charged by DOJ. And in 17 districts, 24 arrests were made April 9 in an alleged scheme involving medically unnecessary back, knee, shoulder and wrist braces.

## Cases Will 'Energize' Prosecutors

"The fact is the government is pursuing large-scale frauds and marketing and kickback schemes, and will be further energized" by these victories, says attorney Melissa Ho, with Polsinelli in Phoenix, Arizona. "DOJ has seen it can get huge recoveries even though they are hugely complicated cases" that are difficult for juries to sort through. Hospitals should review their arrangements with physicians, marketers and others to ensure the payments are fair market value and documented, "because if there's any irregularity, they're setting themselves up at a minimum for grand-jury subpoenas, which are costly to respond to, and then witness interviews," Ho explains. DOJ could start with a civil investigation, "but if the government thinks there's truly fraud, they skip that and go straight to a subpoena." And if providers don't respond fast enough for the government, they may get hit with search warrants, interviews and potentially indictments, she warns.

A total of 17 people have now been convicted in connection with Forest Park Medical Center, an out-of-network hospital that's now out of business. Out-of-network hospitals don't accept reimbursement rates set by insurers. They're free to set their own prices "and were generally reimbursed at substantially higher rates than in-network providers," according to the indictment. Patients who use out-of-network hospitals generally pay much more of their bills—"generally 20% to 50% of the hospital's total charges." In a nutshell, the government alleged that some physicians at Forest Park Medical Center were paid kickbacks to refer patients "with high reimbursing out-of-network private insurance benefits or benefits under certain federally funded programs" and to "sell" Medicare and Medicaid patients to other hospitals.

Forest Park Medical Center was founded by Richard Ferdinand Toussaint Jr., an anesthesiologist; Wade Neal Barker, a bariatric surgeon; Alan Andrew Beauchamp, chief operating officer; and Wilton McPherson Burt, a managing partner—all of whom were charged—and was managed by Burt and Beauchamp, according to the indictment. Barker, Toussaint and Beauchamp pleaded guilty before trial, along with seven other defendants.

They illegally enriched themselves and others through the submission of private, out-of-network claims, and Federal Employees' Compensation Act (FECA) and TRICARE claims, for services provided to beneficiaries at

Forest Park Medical Center. FECA provides medical care and rehab to federal employees, including postal workers.