Compliance Today - June 2019
Since when did a nursing home need a compliance program?

By Craig G. Ratner, JD, MPA, CHC, CPC-A

Craig G. Ratner (craig@craigrp.com) is Founder and President of CRAIGroup, LLC in Philadelphia, PA.

I recently re-read an excellent article,[1] titled "Qui Tam," which focuses on the increase of federal investigations into alleged violations of the federal Anti-Kickback Statute (AKS)[2] and other federal fraud and abuse laws. The author of the piece noted that many of these investigations originate when the federal government decides to "intervene" (i.e., join the lawsuit) in a qui tam action, also known as a "whistleblower" case. In fact, although fewer than 25% of filed qui tam actions result in federal intervention, qui tam litigation has increased exponentially in the last 30 years, with more than 7,600 qui tam cases resulting in over $32 billion (that's billion with a "B") in settlements and judgments since 1988.[3]

The author specifically referenced the $6.9 million settlement reached by the U.S. Attorney's Office for the Central District of California with four San Diego-area nursing homes owned by Los Angeles-based Brius Management Co. (Brius).[4] The settlement resolved allegations that employees of the nursing homes paid kickbacks for patient referrals, in violation of both the AKS and California's Anti-Kickback Statute,[5] and subsequently submitted fraudulent bills to Medicare and Medi-Cal (Medicaid in California) in violation of the federal False Claims Act (FCA).[6]

The Brius case was based on the so-called "implied certification" theory,[7] which states that any claim that is the result of a referral tainted by prohibited remuneration (i.e., patients referred because of illegal kickbacks) constitutes a false claim. Brius's AKS violation also implicated the FCA. Moreover, Section 6402(f)(1) of the Patient Protection and Affordable Care Act (PPACA) amended the AKS, essentially codifying the implied certification theory to establish conclusively that Medicare or Medicaid claims that include items or services that result in AKS violations are considered false claims under the FCA.[8]