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The top government enforcement priorities in healthcare: View from the trenches

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Although 2017 brought a change of Administration and with it, new leadership of federal agencies — including the United States Department of Justice (DOJ) and Health and Human Services (HHS) — government enforcement in healthcare remains at an all-time high. As in past years, the federal False Claims Act (FCA) continues to be the most powerful tool in the federal government's fraud-fighting toolkit, which is not surprising, considering Attorney General Jeff Session's public statements in support of the FCA, including during his Senate confirmation hearings. This article explores some of the current top government enforcement priorities in the healthcare industry.

Opioid fraud and abuse

Perhaps the central focus of the government's current enforcement activity in the healthcare industry relates to prescribing opioids and other narcotic drugs. The United States is in the midst of an opioid overdose epidemic and, according to the Centers for Disease Control and Prevention (CDC), nearly half of all opioid overdose deaths involve a prescription opioid.^[1]

In July 2017, the DOJ announced the largest healthcare fraud takedown in history, which included charges against more than 412 individuals who were allegedly responsible for \$1.3 billion in fraud losses.^[2] The defendants included doctors, nurses, and other licensed medical professionals and, of those charged, more than 120 defendants were charged for their alleged roles in prescribing and distributing opioids and other dangerous narcotic drugs.

The following month, the DOJ announced the creation of the Opioid Fraud and Abuse Detection Unit, a new DOJ pilot program that will focus specifically on opioid-related healthcare fraud by using data to identify and prosecute individuals who contribute to the opioid epidemic.^[3] The program includes funding 12 federal prosecutors who will spend the next three years focusing exclusively on investigating and prosecuting healthcare fraud related to prescription opioids, including pill mills and pharmacies that unlawfully divert or dispense prescription opioids for unlawful purposes.

In September 2017, a coalition of 41 state Attorneys General announced a joint investigation focusing on manufacturers and distributors of prescription opioid drugs and whether those companies engaged in unlawful marketing or distribution practices.^[4] The state investigation kicked off with subpoenas to pharmaceutical manufacturers Endo, Janssen, Teva, and Allergan, as well as distributors AmerisourceBergen, Cardinal Health, and McKesson.

Perhaps somewhat ironically, the DOJ is also cracking down on pain management specialists and other physicians who over utilize urine drug screening for opioid patients. A November 2017 *Bloomberg* article quoted both a federal prosecutor and an official from the Health & Human Services (HHS) Office of Inspector General

(OIG), both of whom expressed concern over the amount of money that Medicare has paid doctors to conduct urine drug screening, much of which, according to the officials, may not meet medical necessity.⁵¹

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