



## HEALTHCARE SWAT TEAMS STRIKE AGAIN

*Cheryl Coon*

In June 2016, the federal Medicare Fraud Strike Force struck again, sweeping in 301 individuals including 61 professionals from doctors to nurses in the largest strike force action to date. And that number does not include other health care providers who are now subject to payment suspension by the Centers for Medicare & Medicaid Services (“**CMS**”). The claims involve approximately \$900 million in false billings and locations that crisscross the United States.

Many of the claims are concentrated in three (3) areas primarily related to Medicare Part D prescription drugs, Medicaid personal care services and Medicare home health benefits, and include:

- Home health care
- Psychotherapy
- Physical and occupational therapy
- Durable medical equipment
- Prescription drugs

While home health and hospice have been areas of concern, there is a new area of focus as well, namely the Medicare Part D prescription drug program. Alleged crimes and violations include:

- Fraud
- Anti-kickback violations (improper remuneration)
- Money laundering
- Billing for services that were not rendered
- Providing medically unnecessary services
- Falsification of records
- False certifications for services

Many of the cases involve kickbacks, such as improper financial payments to pay for referrals to patient recruiters, other health care providers or other parties, which is another hot area these days. Be it a padded medical director fee or an outright payment for each referral, direct or indirect payments for referrals could land a health care practitioner in hot water.

In Texas about 35 health care providers were involved in the take down, including one physician in the Southern District of Texas who had the highest number of home health referrals in south Texas. In north Texas, 11 people were charged for claims valued at over \$47 million. One north Texas case involved a physician who falsely certified patients for home health services, which were valued over \$35 million when combined with associated claims by home health companies.

CMS, the Department of Justice (“DOJ”) and the Office of Inspector General are taking advantage of new data mining procedures that allow them to focus on questionable billing practices and possible health care fraud. They are also taking advantage of the hundreds of



new personnel and approximately \$350 million dollars in additional funding in the past few years to bring these large scale enforcement actions.

The bottom line for health care providers and companies in related businesses is that the federal and state governments are increasing their enforcement efforts. The increased enforcement is aided by sophisticated data analytics that allow them to plow through an enormous amount of data in real time. Those in the health care industry should therefore take steps to make sure they avoid the next take down, which may include:

- Proper training of all employees regarding billing and other important policies.
- Having a monitoring system in place to periodically evaluate your billing practices and other compliance systems.
- Staying on top of changes in the law, particularly since health care law changes at a fairly rapid pace.
- Completing due diligence with regard to all compensation and ownership relationships. Is the value being exchanged fair market value and commercially reasonable for the particular transaction?

As a law professor who had worked for the Internal Revenue Service once said about taxes and tax deductions, overall just “don’t be a pig.” If a compensation relationship looks too good to be true, it probably is. The increased value may be masking what are really payments for referrals, as in a hefty medical director fee from a nursing home or other facility. Or if a proposed transaction has a new “key” to avoiding the compliance pitfalls and offers great rewards, providers may want to seek legal advice (think the pod laboratory structures in the recent past). It is cheaper in the long run to spend upfront to ensure compliance than to face the DOJ and a search warrant later.

## Meet the Author



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