



Healthcare Regulatory Enforcement

Alive and Well

BY DANIEL K. GLESSNER

THE 1996 Health Insurance Portability and Accountability Act (“HIPAA”) established the national Healthcare Fraud and Abuse Control Program. This program requires annual reports of the government’s efforts with regard to enforcement actions and the amount collected each year as a result. In 2015 that amount was \$1.9 billion in healthcare fraud judgments and settlements which derived from 800 criminal actions against individuals or entities and 667 civil actions related to Medicare, Medicaid, false claims and civil monetary payments. Additionally, 4,112 individuals and entities were banned from Medicare participation. Suffice it to say that healthcare fraud and abuse enforcement has become a large revenue enhancer for the federal government. Furthermore, while final numbers will not be reported until February of this year, 2016 kept the trend of large enforcement recoveries alive and well.

Healthcare fraud and abuse cases are enforced and prosecuted by the Department of Health and Human Services Office of the Inspector General and the Department of Justice. Many fraud and abuse cases are intentional in nature and involve some kind of elaborate, or blatant, scheme to bilk the federal government out of Medicare and Medicaid dollars. Other cases, while not necessarily intentional, violate the Anti-Kickback Statute, the Physician Self-Referral Prohibition (the “Stark Regulations”) or the False Claims Act. These laws are complicated and, if not navigated correctly,

can lead to unwanted circumstances for physicians, hospitals and other providers.

In addition to healthcare fraud and abuse enforcement, we have recently seen an uptick in HIPAA enforcement from the Department of Health and Human Services Office of Civil Rights (“OCR”). According to the hhs.gov website, as of October 31, 2016, the OCR has resolved nearly 25,000 cases, including settling 40 of those cases resulting in collections of over \$48 million. From HIPAA’s inception and until the past few years, the OCR has had a reputation of working with covered entities without major consequences. That trend has been reversed as OCR has taken a more aggressive enforcement stance, particularly in the area of compliance with HIPAA security rules.

The major cases of 2016 fell into several categories. There was a fair share of blatant cases based on intentional illegal fraud schemes, such as a hospice scheme in which the government collected \$6.8 million from two California physicians who were falsely certifying the patients were dying and were therefore entitled to hospice services. Other key cases last year include violations of the False Claims Act based on billings for medically unnecessary services or for services performed by providers without the appropriate license or certifications required to bill the Medicare system. Several Anti-Kickback cases were prosecuted last year including a \$513 million settlement with Tenet Health. Last year’s cases also included Stark Law violations

based on inability of hospital to pay fair market value to physicians for various services or to meet the technical requirements of the Stark Law.

The OCR has also been busy with the enforcement of HIPAA Privacy and Security Regulation breaches. Dove-tailing off of a \$34.7 million billing fraud settlement against 21st Century Oncology, a Florida-based international practice, the OCR is in the process of investigating HIPAA Security Rule violations that may have impacted the protected healthcare information of 2.2 million current and former patients.

Also in 2016, the DOJ began to implement the “Yates Memo,” thereby stressing individual accountability. As an example, the former Toumey Healthcare Systems CEO was forced to personally pay \$1 million in order to settle fraud case allegations. We can expect to see more administrators, board members and physicians held personally accountable in the future.

Not only is healthcare fraud and abuse alive and well, the OCR promises to fund necessary expenditures for its ongoing enforcement activities, and we can expect the trend to continue, if not grow. In light of this continued enforcement, it is a good time to revisit your practice’s compliance program to ensure you are in the best position to prevent and/or respond to any issues you may encounter.

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