HOT TOPICS IN HEALTHCARE FRAUD

Presented by:
Jeffrey W. Dickstein and Amy L. Easton
Phillips and Cohen LLP
Hot Topics in Healthcare Fraud - Agenda

• FCA 101 - the Basics
• DOJ Recoveries and Statistics
• Cases in the News
• Trends and Other Issues
• What we Can Learn
• Best Practices
The FCA 31 U.S.C. §§3729 et seq. essentially imposes liability for knowingly:

- (A) presenting, or causing to be presented, a false or fraudulent claim for payment or approval;
- (B) making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim;
- (C) conspiring to commit a violation of the FCA; and
- (G) making, using or causing to be made or used a false record or statement material to an obligation to pay or knowingly conceal or knowingly and improperly avoid or decrease.
FCA 101 - the Basics

• The FCA is the primary civil remedy for healthcare fraud for knowingly submitting (or causing to submit) a false or fraudulent claim.

• FCA judgements impose treble damages and civil penalties.

• DOJ investigates and pursues cases, in conjunction with CMS, HHS-OIG and sometimes state AG offices.
Whistleblowers—*qui tam* provisions

- Actions under the FCA can be initiated by whistleblowers who are entitled to a share between 15-30%
- DOJ decides whether to “intervene”
- Cases can be pursued by the whistleblower on behalf of the government if they decline
DOJ FCA Recoveries

Healthcare fraud is more than 50% of DOJ FCA Recoveries

• Of the $4.7 billion recovered in 2016, $2.5 billion came from the health care industry
• Including:
  - drug companies
  - medical device companies
  - hospitals
  - outpatient facilities
  - nursing homes/skilled nursing facilities
  - laboratories
  - physicians

DOJ Press Release December 14, 2016
DOJ Healthcare *Qui tam* case statistics FY 2016

- 702 FCA cases filed by whistleblowers
- $2.5 billion recovered from whistleblower healthcare cases
- $71 million of that recovered from whistleblower cases declined by the Government
- $450 million paid in whistleblower awards
Trends and healthcare fraud in the news . . .
Pharma/Drugs and Devices

• Largest recoveries are in the drug and device industry
• $1.2 billion in FY 2016 alone
• Theories include failure to report discounts, kickbacks, off-label, etc.
Wyeth and Pfizer settle for $784.6M

Drugmaker Pfizer Inc. on Tuesday said it reached an agreement in principle to pay $784.6 million to settle a long-running U.S. government investigation of allegations that its Wyeth unit overcharged government Medicaid health programs for the heartburn drug Protonix.
Novartis Pharmaceuticals Corp. settles for $390 million

Novartis to pay $390 million in U.S. settlement over pharmacy kickbacks

By Sarah N. Lynch | WASHINGTON

Novartis Pharmaceuticals Corp will pay $390 million to settle U.S. charges that it paid specialty pharmacies illegal kickbacks in exchange for inducing patients to refill certain medications, according to an accord announced Friday.
Hospital and Outpatient Clinics

- In FY 2016 accounted for more than $360M of recoveries
- Types of cases include kickbacks, medically unnecessary services, upcoding, unbundling, services not provided, etc.
- Much focus on these cases
Tenet Civil settlement for $244.2M

Tenet Healthcare to pay more than $513 million over fraud scheme: Justice Department

U.S. hospital chain Tenet Healthcare Corp and two of its Atlanta-area units will pay more than $513 million to resolve criminal charges and civil claims relating to a scheme to defraud the United States and pay kickbacks in exchange for patient referrals, the Justice Department said on Monday.
More than 450 hospitals pay over $250 million in cardiac-device investigation

By Lisa Schencker | October 30, 2015
(This story was updated at 5 p.m. ET.)

More than 450 hospitals have settled with the government for more than $250 million as part of a yearslong, nationwide investigation into the suspected overuse of implantable cardiac devices, the U.S. Justice Department announced Friday.

The hospital systems involved include many of the country’s largest, such as Adventist, Ascension Health, Banner Health, Catholic Health Initiatives, Community Health Systems, HCA, Tenet Healthcare Corp. and Universal Health Services among others.

Feds wrap national probe into cardiac devices; 51 more hospitals settle

By Lisa Schencker | February 17, 2016

Another 51 hospitals will pay the government to get out from under a federal probe into the suspected overuse of implantable cardioverter defibrillators, or ICDs. The U.S. Justice Department said the settlements announced Wednesday, which tally $23 million, mark the “final stage” of its far-reaching investigation.

More than 500 hospitals in all have settled with the government in connection with the investigation.
Hospital and Outpatient Clinics - Medical Necessity

- Importance of medical necessity cases
- These are in the news often—unnecessary procedures examples
- CMS and DOJ cares—patient harm
- Recent emerging caselaw
- Not intending to be in operating rooms, hospitals or offices and replace their judgment with physicians’ judgment
- Not looking for “grey” areas or one off instances or occurrences
- DOJ retains medical experts
Medical Lab Fraud

- Settlements of more than $300M for FY 2016
- Theories include unnecessary and excessive testing as well as kickbacks
- Millennium case and others
Medical Lab Fraud

Millennium Health to pay $256 million over allegedly tainted lab claims

By Lisa Schencker | October 19, 2015

Millennium Health, a San Diego based lab company, will pay the government $256 million to settle allegations it billed the government for medically unnecessary urine, drug and genetic testing and gave free drug cup tests to physicians in exchange for referrals.
Skilled Nursing Facilities

- More than $160M in settlements in fiscal year 2016
- Most recently (FY 2017), the largest settlement in the SNF arena was for $145M against Life Care Centers of America
- Many cases have settled - Extendicare, Rehabcare/Kindred, Life Care
- Others still being litigated - Manorcare and Sava
- CMC Skilled Nursing Facilities in Florida - large verdict including penalties in February 2017 - non-intervened case
- Theories in these cases include, unnecessary services, worthless care, care not provided etc.
Life Care Centers of America agrees to $145 million settlement

Life Care Centers of America, the nation's largest private nursing home company based in Cleveland, Tenn., has agreed to pay $145 million over charges that it overbilled the government for its cost of treating patients, the U.S. Department of Justice announced today in a landmark settlement.
Other Elder Care issues

- Hospice - many cases such as Aseracare, Evercare, Vitas and others
- Nursing home cases - Extendicare settlement; recent Vanguard Complaint
- A DOJ priority — Elder Justice Task Force
Additional Trends/Issues

• Individuals liability - physicians and corporate decision makers
• Overpayment liability
• Data mining/analytics
• Statistical sampling
What we can learn?

- Whistleblowers are bringing these cases
- All sectors of the healthcare industry are affected
- Compliance is key
- Many of these issues start as internal complaints
- Data can also tell a story
Best Practices

• Listen!
• These are the same tips that will end up as *qui tam* lawsuits
• Institutions must have a way to deal meaningfully with complaints
• Can’t ignore or explain away complaints and expect government to accept excuses
• Investigate—don’t stick your head in the sand
• Look at data and audit
• Report fraud internally
Questions?

Jeffrey W. Dickstein
Phillips and Cohen LLP
jdickstein@phillipsandcohen.com
(305) 372-5200

Amy L. Easton
Phillips and Cohen LLP
aeaston@phillipsandcohen.com
(202) 833-4567