Health Law Daily Wrap Up, TOP STORY: Largest health care fraud takedown on record; $900M in false billing, 301 individuals charged, (Jun. 23, 2016)

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By Richard Kusserow, CEO of Strategic Management & Wolters Kluwer Outside Contributor, and Wolters Kluwer Editorial Staff

The Department of Justice and HHS announced the results of a nationwide sweep led by the Medicare Fraud Strike Force in 36 federal districts that resulted in a record number of individuals being charged. The DOJ-led Strike Force combines investigative resources of the Federal government that includes the HHS Office of Inspector General (OIG) and the Federal Bureau of Investigation (FBI). In addition, 23 state Medicaid Fraud Control Units also participated in the arrests. The DOJ noted this coordinated takedown was the largest in history, both in terms of the number of defendants charged and loss amount.

Charges. The defendants were charged with various health care fraud-related crimes, including conspiracy to commit health care fraud, violations of the anti-kickback statutes, money laundering, and aggravated identity theft. The charges are based on a variety of alleged fraud schemes involving various medical treatments and services, including home health care, psychotherapy, physical and occupational therapy, durable medical equipment (DME), and prescription drugs. More than 60 of the defendants arrested are charged with fraud related to the Medicare prescription drug benefit program known as Part D, which is the fastest-growing component of the Medicare program overall. The schemes involved submitting fraudulent claims to Medicare and Medicaid and the defendants in these cases involved doctors, nurses, licensed medical professionals, health care company owners, and others.

The Medicare Fraud Strike Force operations are part of the Health Care Fraud Prevention & Enforcement Action Team (HEAT) that has been operating since 2007 as a joint initiative between the DOJ and HHS to focus their efforts to prevent and deter fraud and enforce current anti-fraud laws around the country. It operates in nine locations and, since its inception, has charged over 2,900 defendants who collectively have falsely billed the Medicare program for over $8.9 billion.

The court documents for each case will posted online, as they become available, here: https://www.justice.gov/opa/documents-and-resources-june-22-2016-medicare-fraud-strike-force-press-conference.

Culmination of a year's worth of strategic planning. The takedown is the "culmination of at least a year's worth of strategic planning and messaging by the DOJ" whose primary purpose is to "demonstrate that the Administration is taking health care fraud seriously and is achieving results [and to] serve notice on health care providers nationwide that if they break the law they will be criminally prosecuted," said former Assistant U.S. Attorney Patrick Cotter, an officer and leader of the Government Interaction/White Collar Practice Group at Greensfelder, Hemker & Gale, P.C. "The DOJ meant it when it said in the much-discussed 'Yates Memo' that they would seek to hold not just companies but individuals responsible criminally for violations of 'white collar' crimes," he said. Health care providers can anticipate greater and more vigorous governmental scrutiny of their participation in federal medical insurance programs of all kinds.

Changing the enforcement approach from the traditional "civil sanctions first" mentality affects how attorneys representing health care providers should advise their clients and deal with the government. "Attorneys advising health care professionals should recognize that, going forward, they must include advice to their clients about the possible criminal law consequences for failure to stay on the right side of the health care law rules," Cotter said. "Also, how health care providers respond to government investigations, including requests for interviews and records, must also now change to recognize that these investigations are no longer the primary civil processes they have been."

Richard P. Kusserow served as HHS Inspector General for 11 years. He currently is CEO of Strategic Management Services, LLC (SM), a firm that has assisted more than 3,000 organizations and entities with

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