

**The Department of Justice (DOJ) recently announced its largest-ever healthcare fraud and opioid enforcement action. In a coordinated effort, DOJ charged 345 defendants with more than US\$6 billion in fraud losses for submitting false and fraudulent claims to federal healthcare programs and private insurers.**

The nationwide enforcement operation has been in motion since April and is the product of inter-agency cooperation between the Criminal Division, Fraud Section's Health Care Fraud Unit, the Health Care Fraud and Appalachian Regional Prescription Opioid (ARPO) Strike Force program, local US Attorneys' Offices, HHS-OIG, FBI and DEA.

While the opioid crisis has long been a target of federal prosecutors, it is interesting to see law enforcement pivot to investigating allegations of fraud related to telemedicine, which has played an increasingly important role during the COVID-19 pandemic. Telemedicine fraud allegations made up the bulk of the charged losses from entities, totaling US\$4.5 billion out of the net US\$6 billion in losses. In total, DOJ has charged 86 criminal defendants in 19 judicial districts, including Ohio. Likewise, the Centers for Medicare and Medicaid Services – Center for Program Integrity announced that it revoked Medicare billing privileges to a record-breaking 256 medical professionals for involvement in telemedicine fraud schemes. Recognizing the utility telemedicine but also the ripe opportunity for malfeasance, HHS Deputy Inspector General Gary Cantrell said, "[t]elemedicine can foster efficient, high-quality care when practiced appropriately and lawfully. Unfortunately, bad actors attempt to abuse telemedicine services and leverage aggressive marketing techniques to mislead beneficiaries about their health care needs and bill the government for illegitimate services."

Despite the new target on telemedicine fraud schemes, DOJ has not lost focus on the opioid crisis and related fraud. The second-largest category relates to charges brought against more than a dozen criminal defendants in connection with over US\$845 million of allegedly false and fraudulent claims for tests and treatment of patients struggling with drug and/or alcohol addiction. Subjects of the charges include physicians, owners and operators of substance abuse treatment facilities, and patient recruiters, otherwise known as "body brokers."

Allegations include subjecting patients to unnecessary drug testing, billing for treatments that were never provided and prescribing unnecessary treatments. Additionally, patients were allegedly frequently discharged from one treatment facility only to be admitted to another, in exchange for more kickbacks.

Finally, traditional healthcare fraud schemes, including illegal prescription and/or distribution of opioids, round out the remainder of fraud charges, with over US\$800 million in false or fraudulent claims through charges brought against 240 criminal defendants.

The 2020 National Health Care Fraud and Opioid Takedown affirms DOJ's prioritization of healthcare fraud. Some of the tools federal prosecutors have in their arsenal include the criminal healthcare fraud statute (18 U.S.C. § 1347), the anti-kickback statute (42 U.S.C. § 1320a-7b), the physician self-referral law (42 U.S.C. § 1395nn) and the False Claims Act (FCA) (31 U.S.C. § 3729-3733). DOJ's 2019 enforcement of the FCA, in which healthcare-related FCA recoveries totaled US\$2.6 billion or approximately 85% of the combined FCA recoveries, which was consistent with the previous decade, demonstrates that DOJ's scrutiny for healthcare providers is likely here to stay. As the healthcare industry expands into new markets like telemedicine and other pivots related to modern challenges, providers must remain vigilant to the pitfalls of healthcare fraud, including by implementing systems to detect and prevent potential fraudulent conduct. Though other healthcare strains remain paramount, this announcement signals that opioid-related fraud and criminal conduct remains a department priority enforcement area, and preemptive, robust compliance programs and measured controls will continue to be vital to fend off potential federal and state inquiries.

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