Session 103 | Show Me the Money ($4.1 Trillion): Health Care Fraud Trends During COVID-19 and Beyond

Health care spending continues to grow each year, reaching $4.1 trillion in 2020 and nearly 20% of the nation’s gross domestic product. During the COVID-19 pandemic, government agencies made billions of dollars available as providers were forced to make massive changes, including accelerating the treatment of patients through telehealth. These changes and the windfall of available money created new opportunities for fraud, waste, and abuse in the health care system in both the criminal and civil contexts. As we emerge from COVID-19, how are the government, corporations, and the plaintiff’s bar adjusting to health care fraud in a post-pandemic environment?

Hear a federal prosecutor and the Health Care Fraud Coordinator for the Department of Justice’s most populous district, a prominent attorney representing clients in high-stakes civil and criminal health care fraud investigations and litigation, the co-leader of a compliance service line for the largest health care-focused law firm in the country, and principal counsel at a world-renowned health system discuss the future of health care fraud as we look to the other side of the COVID-19 pandemic. Discussion topics include: (1) a primer on health care and how COVID-19 has shifted the treatment landscape; (2) government enforcement and civil litigation trends during the COVID-19 pandemic and beyond; (3) the use of data to help shape cases; and (4) a look at exemplary cases that have made national headlines.

Moderator:
Nicole Kim, Assistant General Counsel, Litigation & Investigations, Cardinal Health

Speakers:
Ritu Kaur Cooper, Shareholder, Hall, Render, Killian, Heath & Lyman, P.C.
Roger Hsieh, Assistant United States Attorney, U.S. Attorney’s Office for the Central District of California
Stephen Lee, Member, Law Office of Stephen Chahn Lee, LLC
Claire Yan, Principal Counsel, UCLA Health
Show Me the Money
($4.1 Trillion)
Health Care Fraud Trends During COVID-19 and Beyond
Speakers

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• Roger Hsieh, Assistant United States Attorney
• Stephen Chahn Lee, Member, Law Office of Stephen Chahn Lee, LLC
• Claire Yan, Principal Counsel, UCLA Health

Moderator

• Nicole Kim, Associate General Counsel, Cardinal Health
1/6 of the U.S. economy – more than $4.1 trillion

National Health Expenditures (billions of dollars)

National Health Expenditures (% of total)

Out of pocket, private, Medicare, Medicaid, Military, other, workers comp

#NAPABA22
$4 trillion in federal spending due to the pandemic

- Payroll Protection Program
- Covid testing
Fraud, Waste and Abuse

• System built on trust due to quick processing of claims + “pay and chase” model

• Lots of vulnerabilities
Future Trends (1 of 2)

• Balancing burden on good providers vs. need to deter fraud, waste and abuse

• More private enforcement
Increasing Enforcement Action – Public and Private

Number of New FCA Actions

- NON QUI TAM
- QUI TAM

Graph showing the increase in number of new FCA actions from 2000 to 2020, with a significant rise starting around 2010.
Increasing Enforcement Action – Public and Private

Settlements or Judgments Where Government Declined Intervention as a Percentage of Total FCA Recoveries
Future Trends (2 of 2)

• Classic HCF vs. new models of fraud (e.g., telemedicine, “doctor-enabled fraud”)

• Increasing importance of data analytics
Data-rich environment

- US DOJ has virtually real-time access to Medicare claims data
- Government can get claims data from other programs and insurers
- Providers have access to all of their submitted claims
- Public access to aggregate Medicare data
Sample red flag – billing all office visits at level 5

Established Patient Office Visits - 2017
Key Takeaways for Practitioners

• Triaging cases and determining appropriate tools for government
  • Criminal vs civil vs regulatory/administrative vs licensing
  • Willfulness – mistake vs. fraud
  • Audits vs. fraud reviews
  • Where did the money go?
QUESTIONS?