

HEALTH CARE FRAUD AND THE FCA: BATTLES WON AND THE ROAD AHEAD



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HEALTHCARE FCA RECOVERIES



DOJ FCA Statistics (Oct. 1987-Sept. 2011):

- 69% of all False Claims Act cases
- \$20,998,474,205 recovered in healthcare FCA cases
- Plus \$9.6 billion recovered in healthcare cases since Sept. 2011
- 77 of top 100 FCA settlements are healthcare cases

DIAGNOSTIC TESTING LABS: >\$2.36B



- National Health Labs (1992): \$111 million
- Laboratory Corporation of America (1996): \$187 million
- Damon Chemical Laboratories (1996): \$119 million
- SmithKline Beecham (1997): \$325 million
- Fresenius Medical Care (2000): \$486 million
- Quest Diagnostics (2009): \$302 million
- Quest Diagnostics (2011): \$241 million

HOSPITALS: Columbia/HCA (cost reporting/billing fraud/kickbacks) >\$1.8B

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- Columbia/HCA (2000): \$850 million
 - Quorum Health Group (2000): \$95.5 million
 - Columbia/HCA (2003): \$881 million

HOSPITALS: Tenet Healthcare: >\$1.3B



- 1994: \$324.2 million (kickbacks and fraud at psychiatric hospitals)
- 2002: \$17 million (false laboratory billing)
- 2003/5: \$59 million (medically unnecessary cardiac surgeries)
- 2004: \$22.4 million (kickbacks to doctors)
- 2006: \$900 million (excessive outlier payments, kickbacks to doctors, upcoding)
- 2006: \$21 million (kickbacks to doctors)

HOSPITALS (other): >\$621.5M



- Staten Island Univ Hospital (2005): \$76.5 million civil, false billing re disproportionate share payments
- HealthSouth (2004): \$325 million civil, overbilling for rehabilitative therapy services and coding fraud
- Beth Israel Medical Center (2008): \$72 million civil, inflating reimbursements
- CoxHealth (2008): \$60 million, kickbacks, improper cost reports
- Staten Island Univ Hospital (2008): \$88 million, inflated patient count, billing for outpatient services

NURSING HOMES/HOME HEALTH: >\$585M



- **Billing fraud, quality of care**
 - Beverly Enterprises
 - National Healthcare Corp
 - Vencor
 - Horizon West
 - Omnicare
 - Maxim Healthcare Services
 - LHC Group
- **New York City (2011): authorizing home care services without necessary approval/review**

DRUG PRICING (AWP)/KICKBACKS >\$2.8B

- Inflating the price paid by the government while discounting to other purchasers, “Marketing the spread”

- TAP
- AstraZeneca
- Aventis
- Bristol Meyers Squibb
- Abbott
- Mylan
- McKesson
- GlaxoSmithKline
- Schering Plough
- Teva
- Actavis
- Bayer
- PAR
- Sandoz
- Watson

DRUG PRICING (Best Price): >\$860M



- Concealing the “Best Price” paid by commercial customers
 - “Private Labeling”
 - Bayer
 - GSK
 - Rebates and grants to HMOs
 - Schering Plough
 - Pfizer
 - TAP
 - Nominal Pricing
 - Merck
 - GSK

OFF-LABEL MARKETING (DRUGS)/KICKBACKS: >\$16B



- Marketing FDA-approved drug for non-FDA approved purposes / Kickbacks to doctors
 - Pfizer (x2)
 - Ely Lilly
 - Serono
 - Allergan
 - AstraZeneca
 - Bristol Myers
 - Schering Plough
 - GSK
 - Cephalon
 - J&J
 - Novartis
 - Alpharma
 - Intermune
 - Elan
 - Forest
 - Merck

ADULTERATED DRUGS/cGMP VIOLATIONS



- GlaxoSmithKline (2010): \$750M



GLAXOSMITHKLINE 2012: \$3B



- Criminal Plea: two counts of selling misbranded drug, Paxil and Wellbutrin, one count of failure to notify FDA of drug safety data, Avandia
- Civil Settlement:
 - Off-label promotion (Paxil, Wellbutrin, Advair, Lamictal, Zofran)
 - Kickbacks (above + Imitrex, Lotronex, Flovent, Valtrex)
 - False statements regarding drug safety (Avandia)
 - Best Price fraud
- \$1 billion criminal, \$2 billion civil

PHARMACIES: >\$310M



- CVS Pharmacy (2011): \$17.5 million, inflated prescription claims to Medicaid
- Caremark Rx (2008): \$137.5 million, taking kickbacks from drug manufacturers
- Medco (2006): \$155 million, accepting kickbacks from drug manufacturers, paying kickbacks to health plans, cancelling prescriptions to avoid penalties, underfilling and switching prescriptions

MEDICAL DEVICES (FDCA): >\$1.1B



- Defective products, cGMP violations, unapproved devices, off-label marketing
 - C.R. Bard
 - Lifescan
 - Hewlett-Packard
 - Guidant
 - Boston Scientific
 - Serono
 - 34 hospitals (unapproved cardiac devices)
 - Endovascular Technologies
 - Matria

MEDICAL DEVICES (Billing): >\$1.1B



- Unbundling, upcoding, overbilling
 - Abbott/Novartis/McKesson (Headwaters)
 - Medtronic Spine/Kyphon
 - Huntleigh Technology
 - Gambro (+ kickbacks)
 - Lincare
 - Rotech
 - Scooter Store



MEDICAL DEVICES (Kickbacks): >\$1.6B



- **Kickbacks: \$500 million**
 - Zimmer/Biomet/Depuy/Smith & Nephew
 - American Home Patient
 - Medtronic
 - St Jude Medical
 - Medline (supplies)
- **Kickbacks + other: \$1.1B**
 - Gambro
 - Serono

MANAGED CARE: >\$475.8M



- PacifiCare Health Systems (2002): \$87.3 million civil, inflated insurance claims as FEHBP HMO
- Amerigroup (2008): \$225 million civil, systematically denying enrollment to pregnant women and unhealthy individuals
- CareSource (2011): \$26 million, failing to provide screening, assessment, and case management for children with special needs and adults
- WellCare Health Plans (2012): \$137.5 million, overstated treatment costs, “cherry-picked” patients, overstated patient diagnoses, manipulated performance metrics

MEDICARE CONTRACTORS: >\$220M



- General American Life Insurance (2002): \$76 million, inadequate claims processing on behalf of CMS as a Medicare Part B carrier
- BCBS IL (1998): \$144 million, falsified and overstated performance

