HEALTH CAPITAL Topics
Volume 12
Issue 1
January 2019
Jessica L. Bailey-Wheaton, Esq., Editor
Todd A. Zigrang MBA, MHA, CVA, ASA, FACHE, Publisher

DOJ Recovers Over $2.8 Billion in False Claims Act Cases in 2018

On December 21, 2018, the *U.S. Department of Justice* (DOJ) announced their recovery of more than $2.8 billion in settlements and judgments from civil cases involving fraud and false claims for *fiscal year* (FY) 2018.[1] While 2018 marks the ninth consecutive year in which healthcare fraud settlements exceeded $2 billion, this year's amount was the lowest recovery since 2009.[2] Approximately $2.5 billion was recouped from the healthcare industry for federal losses alone, and included recoveries from drug and medical device companies, managed care providers, hospitals, pharmacies, hospice organizations, laboratories, and physicians.[3] This figure, over 87% of the total recovery amount, far outstripped the $107.5 million recovered from defense contractor companies and the $259.6 million obtained from other industries such as banking.[4] In addition to the $2.5 billion recovered for federal losses, the DOJ recovered millions of dollars for state and Medicaid programs for FY 2018.[5]

Once again this year, the greatest proportion of healthcare recoveries was obtained from the drug and medical device industry. One of the largest settlements within this sector involved AmerisourceBergen Corporation, which paid $625 million to resolve allegations that the company (and some of its subsidiaries) "*sought to circumvent important safeguards intended to preserve the integrity of the nation's drug supply and profit from the repackaging of certain drugs supplied to cancer-stricken patients*."[6]

Additionally, in two separate settlements, pharmaceutical company United Therapeutics Corporation paid $210 million, and drug manufacturer Pfizer paid approximately $23.85 million, to resolve allegations that they set up foundations to pay the copays of thousands of Medicare patients as a way to raise the prices of their drugs.[7]

Additional legal actions were brought by the DOJ against several other provider sectors within the healthcare industry during FY 2018, including *Medicare Advantage Organizations* (MAOs) and health systems, resulting in large recoupments. The most noteworthy of these actions included the $270 million settlement between the DOJ and HealthCare Partners Holdings (d/b/a DaVita Medical Holdings), to resolve liability for "*providing inaccurate information that caused... [MAOs] to receive inflated Medicare payments*."[8] The other most noteworthy action involved the Health Management Associates (HMA) settlement payment of over $216 million to resolve allegations, arising from eight separate whistleblower actions, that HMA hospitals (which are now owned by *Community Health Systems*) "*knowingly billed government health care programs for inpatient services that should have been billed as outpatient or observation services, paid remuneration to physicians in return for patient referrals, and submitted inflated claims for emergency department facility fees*."[9] One of HMA's subsidiaries, Carlisle HMA, also pled guilty to conspiracy to commit healthcare fraud "*arising from illegal conduct designed to aggressively increase admissions to the hospital*," which plea included a $35 million financial penalty.[10]

Of note, the DOJ's press release included an additional section entitled, "*Holding Individuals Accountable*," wherein it reviewed several cases in which the DOJ obtained substantial judgments from individuals, illustrating its continued commitment to the 2015 memorandum authored by then-Deputy Attorney General Sally Yates regarding holding individuals accountable for corporate wrongdoing (often referred to as the "Yates Memo").[11]

Money recovered by the DOJ through healthcare fraud enforcement is crucial in returning assets back to federally funded programs such as Medicare, Medicaid, and TRICARE.[12] According to the DOJ's press release, the recoveries made in 2018 are "*a message that fraud and dishonesty will not be tolerated*," and "*the Department's vigorous pursuit of health care fraud prevents billions more in losses by deterring those who might otherwise try to cheat the system for their own gain*."[13]

Since 1986, recoveries made under civil FCA suits total more than $59 billion.[14] Over the past five years, there has been a significant number of FCA suits brought on by both *whistleblowers* (also known as *qui tam* lawsuits) and the DOJ, with 645 qui tam cases and 122 non qui tam cases initiated in FY 2018 alone (both of which numbers are substantially similar to FY 2017 figures).[15] Despite the Trump Administration's actions to deregulate the healthcare industry during the last two years, and the lower amount of monetary recoveries in FY 2018, the number of new cases in 2018 enforcing healthcare fraud and abuse laws appears to be on par with figures from previous years,[16] suggesting that FCA enforcement will remain high going forward.

(Continued on next page)

1 "Justice Department Recovers Over $2.8 Billion from False Claims Act Cases in Fiscal Year 2018" Department of Justice, Office of Public Affairs, Press Release, December 21, 2018, https://www.justice.gov/opa/pr/justice-department-recovers-over-28-billion-false-claims-act-cases-fiscal-year-2018 (Accessed 1/21/19).
2 *Ibid*; "Fraud Statistics – Overview" Department of Justice, https://www.justice.gov/civil/page/file/1080696/download?utm_medium=email&utm_source=govdelivery (Accessed 1/21/19).
3 Department of Justice, Office of Public Affairs, December 21, 2018.
4 *Ibid*; "Department of Justice; "DOJ's False Claims Act Recoveries Fall to $2.8 Billion in FY2018" By Kirk Ogrosky Murad Hussain, December 26, 2018, https://www.arnoldporter.com/en/perspectives/publications/2018/12/doj-announces-fy2018-fca-recoveries (Accessed 1/21/19).
5 Department of Justice, Office of Public Affairs, December 21, 2018.
6 *Ibid.*
7 *Ibid.*
8 *Ibid.*
9 "Hospital Chain Will Pay Over $260 Million to Resolve False Billing and Kickback Allegations; One Subsidiary Agrees to Plead Guilty" U.S. Department of Justice, Press Release, September 25, 2018, https://www.justice.gov/opa/pr/hospital-chain-will-pay-over-260-million-resolve-false-billing-and-kickback-allegations-one (Accessed 1/21/19); Department of Justice, Office of Public Affairs, December 21, 2018.
10 *Ibid.*
11 *Ibid;* "Individual Accountability for Corporate Wrongdoing" By Sally Quillian Yates, Letter to Assistant U.S. Attorneys General and All United States Attorneys, September 9, 2015.
12 Department of Justice, Office of Public Affairs, December 21, 2018.
13 *Ibid.*
14 Department of Justice, (Accessed 1/21/19).
15 *Ibid.*
16 *Ibid.*

(Continued on next page)

HEALTH CAPITAL CONSULTANTS

(800)FYI - VALU

Providing Solutions in the Era of Healthcare Reform

Founded in 1993, HCC is a nationally recognized healthcare economic financial consulting firm

- HCC Home
- Firm Profile
- HCC Services
- HCC Experts
- Clients & Projects
- HCC News
- Upcoming Events
- Contact Us
- Email Us

HCC Services

- Valuation Consulting
- Commercial Reasonableness Opinions
- Commercial Payor Reimbursement Benchmarking
- Litigation Support & Expert Witness
- Financial Feasibility Analysis & Modeling
- Intermediary Services
- Certificate of Need
- ACO Value Metrics & Capital Formation
- Strategic Consulting
- Industry Research Services

Todd A. Zigrang, MBA, MHA, CVA, ASA, FACHE, is the President of **HEALTH CAPITAL CONSULTANTS** (HCC), where he focuses on the areas of valuation and financial analysis for hospitals, physician practices, and other healthcare enterprises. Mr. Zigrang has over 20 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 1,000 transactions and joint ventures. Mr. Zigrang is also considered an expert in the field of healthcare compensation for physicians, executives and other professionals.

Mr. Zigrang is the co-author of "*The Adviser's Guide to Healthcare – 2nd Edition*" [2015 – AICPA], numerous chapters in legal treatises and anthologies, and peer-reviewed and industry articles such as: *The Accountant's Business Manual* (AICPA); *Valuing Professional Practices and Licenses* (Aspen Publishers); *Valuation Strategies; Business Appraisal Practice*; and, *NACVA QuickRead*. In addition to his contributions as an author, Mr. Zigrang has served as faculty before professional and trade associations such as the American Society of Appraisers (ASA); American Health Lawyers Associate (AHLA); the American Bar Association (ABA); the National Association of Certified Valuators and Analysts (NACVA); Physician Hospitals of America (PHA); the Institute of Business Appraisers (IBA); the Healthcare Financial Management Association (HFMA); and, the CPA Leadership Institute.

Mr. Zigrang holds a Master of Science in Health Administration (MHA) and a Master of Business Administration (MBA) from the University of Missouri at Columbia. He is a Fellow of the American College of Healthcare Executives (FACHE) and holds the Accredited Senior Appraiser (ASA) designation from the American Society of Appraisers, where he has served as President of the St. Louis Chapter, and is current Chair of the ASA Healthcare Special Interest Group (HSIG).

John R. Chwarzinski, MSF, MAE, is Senior Vice President of **HEALTH CAPITAL CONSULTANTS** (HCC). Mr. Chwarzinski's areas of expertise include advanced statistical analysis, econometric modeling, as well as, economic and financial analysis. Mr. Chwarzinski is the co-author of peer-reviewed and industry articles published in *Business Valuation Review* and *NACVA QuickRead*, and he has spoken before the Virginia Medical Group Management Association (VMGMA) and the Midwest Accountable Care Organization Expo. Mr. Chwarzinski holds a Master's Degree in Economics from the University of Missouri – St. Louis, as well as, a Master's Degree in Finance from the John M. Olin School of Business at Washington University in St. Louis. He is a member of the St. Louis Chapter of the American Society of Appraisers, as well as a candidate for the Accredited Senior Appraiser designation from the American Society of Appraisers.

Jessica L. Bailey-Wheaton, Esq., is Vice President and General Counsel of **HEALTH CAPITAL CONSULTANTS** (HCC), where she conducts project management and consulting services related to the impact of both federal and state regulations on healthcare exempt organization transactions and provides research services necessary to support certified opinions of value related to the Fair Market Value and Commercial Reasonableness of transactions related to healthcare enterprises, assets, and services. Ms. Bailey-Wheaton is a member of the Missouri and Illinois Bars and holds a J.D., with a concentration in Health Law, from Saint Louis University School of Law, where she served as Fall Managing Editor for the *Journal of Health Law & Policy*.

Daniel J. Chen, MSF, CVA, is a Senior Financial Analyst at **HEALTH CAPITAL CONSULTANTS** (HCC), where he develops fair market value and commercial reasonableness opinions related to healthcare enterprises, assets, and services. In addition, Mr. Chen prepares, reviews and analyzes forecasted and pro forma financial statements to determine the most probable future net economic benefit related to healthcare enterprises, assets, and services, and applies utilization demand and reimbursement trends to project professional medical revenue streams, as well as ancillary services and technical component (ASTC) revenue streams. Mr. Chen has a Master of Science in Finance from Washington University St. Louis.