

## DOJ Recovers Over \$3 Billion in False Claims Act Cases

On January 9, 2020, the *U.S. Department of Justice* (DOJ) announced their recovery of more than \$3 billion in settlements and judgments from civil cases involving fraud and false claims for *fiscal year* (FY) 2019.<sup>1</sup> Approximately \$2.6 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.<sup>2</sup> This figure is slightly higher than healthcare-related recoveries during FY 2018, which totaled over \$2.5 billion.<sup>3</sup> Settlements received from the healthcare industry (over 85% of the total recovery amount) far outstripped the \$252.2 million recovered from defense contractor companies and the \$196.8 million obtained from other industries such as banking.<sup>4</sup> In addition to the \$2.6 billion recovered for federal losses, the DOJ also recovered millions of dollars for state and Medicaid programs for FY 2019.<sup>5</sup>

As seen in years past, the largest healthcare recoveries were obtained from the drug and medical device industry. Two of the largest settlements within the healthcare industry, in 2019, involved opioid manufacturers. According to the DOJ's press release, these recoveries reflect "*the department's commitment to holding drug companies accountable for their role in the opioid crisis.*"<sup>6</sup> One recovery involved multinational consumer goods manufacturer, Reckitt Benckiser Group paid \$1.4 billion to settle civil and potential criminal liability pertaining to the marketing of their opioid addiction treatment drug, Suboxone.<sup>7</sup> The drug, designed to reduce withdrawal symptoms while users receive addiction treatment, and its active ingredient buprenorphine are "*powerful and addictive opioids.*"<sup>8</sup> This settlement is the largest recovery in a case pertaining to opioid drugs and is one of the five largest healthcare settlements of the past decade.<sup>9</sup>

Additional legal action was brought by the DOJ against other drug manufacturers. In 2019, seven pharmaceutical manufacturers paid a total of \$624 million in settlements. These manufacturers, including Actelion Pharmaceuticals US Inc., Amgen Inc., Astellas Pharma US Inc., Alexion Pharmaceuticals, Inc., Jazz Pharmaceuticals, Inc., Lundbeck LLC, and US Worldmeds LLC, paid to settle allegations of paying patient copays for their company's drugs through

seemingly independent charitable foundations – a violation of the Anti-Kickback Statute.<sup>10</sup>

The DOJ also pursued cases involving several other sectors within the healthcare industry during FY 2019, including private physician practices, health systems, laboratory service providers, and medical supplies and technology companies, resulting in large recoupments.<sup>11</sup> The most noteworthy of these actions included the \$48 million recovery received from Encompass Health Corporation (f/k/a HealthSouth Corporation), the largest inpatient rehabilitation facility (IRF) operator in the U.S., to settle allegations of Medicare fraud.<sup>12</sup> The IRF operator allegedly provided misinformation to Medicare in order to receive a higher reimbursement rate and admitted some patients to its IRFs unnecessarily.<sup>13</sup> This settlement comes only a decade after the company, under its former name HealthSouth Corporation, paid a \$325 million settlement under the *False Claims Act* (FCA) for fraudulent Medicare billing in 2009.<sup>14</sup>

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").<sup>15</sup>

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.<sup>16</sup> Since 1986, recoveries made under civil FCA suits total more than \$62 billion.<sup>17</sup> 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 636 *qui tam* cases and 146 non *qui tam* cases initiated in FY 2019 alone (both of which numbers are substantially similar to FY 2018 figures).<sup>18</sup> Despite the Trump Administration's actions to deregulate the healthcare industry during the past three years, the number of new cases enforcing healthcare fraud and abuse laws in 2019 appears to be on par with figures from previous years,<sup>19</sup> suggesting that FCA enforcement will remain high going forward.

- 1 "Justice Department Recovers over \$3 Billion from False Claims Act Cases in Fiscal Year 2019," Department of Justice, Office of Public Affairs, Press Release, January 9, 2020, <https://www.justice.gov/opa/pr/justice-department-recovers-over-3-billion-false-claims-act-cases-fiscal-year-2019> (Accessed 3/2/20).
- 2 *Ibid.*
- 3 "Fraud Statistics – Overview" Department of Justice, <https://www.justice.gov/opa/press-release/file/1233201/download> (Accessed 3/2/20).
- 4 Department of Justice, Office of Public Affairs, January 9, 2020; "Fraud Statistics – Overview" Department of Justice.
- 5 Department of Justice, Office of Public Affairs, January 9, 2020.
- 6 *Ibid.*
- 7 "Justice Department Obtains \$1.4 Billion from Reckitt Benckiser Group in Largest Recovery in a Case Concerning an Opioid Drug in United States History," Department of Justice, Office of Public Affairs, Press Release, July 11, 2019, [https://www.justice.gov/opa/pr/justice-department-obtains-14-billion-reckitt-benckiser-group-largest-recovery-case?utm\\_medium=email&utm\\_source=govdelivery](https://www.justice.gov/opa/pr/justice-department-obtains-14-billion-reckitt-benckiser-group-largest-recovery-case?utm_medium=email&utm_source=govdelivery) (Accessed 3/2/20).
- 8 *Ibid.*
- 9 *Ibid.*; "Fact Sheet – Significant False Claims Act Settlements & Judgements Fiscal Years 2009-2016," Department of Justice, <https://www.justice.gov/opa/press-release/file/918366/download> (Accessed 3/2/20).
- 10 Department of Justice, Office of Public Affairs, January 9, 2020; "Two Pharmaceutical Companies Agree to Pay a Total of Nearly \$125 Million to Resolve Allegations That They Paid Kickbacks Through Copay Assistance Foundations," Department of Justice, Office of Public Affairs, Press Release, April 25, 2019, [https://www.justice.gov/opa/pr/two-pharmaceutical-companies-agree-pay-total-nearly-125-million-resolve-allegations-they-paid?utm\\_medium=email&utm\\_source=govdelivery](https://www.justice.gov/opa/pr/two-pharmaceutical-companies-agree-pay-total-nearly-125-million-resolve-allegations-they-paid?utm_medium=email&utm_source=govdelivery) (Accessed 3/4/20).
- 11 Department of Justice, Office of Public Affairs, January 9, 2020; "Kansas Cardiologist and His Practice Pay \$5.8 Million to

- Resolve Alleged False Billings for Unnecessary Cardiac Procedures," Department of Justice, Office of Public Affairs, Press Release, May 30, 2019, <https://www.justice.gov/opa/pr/kansas-cardiologist-and-his-practice-pay-58-million-resolve-alleged-false-billings> (Accessed 3/4/20); "MedStar Health to Pay U.S. \$35 Million to Resolve Allegations that it Paid Kickbacks to a Cardiology Group in Exchange for Referrals," Department of Justice, Office of Public Affairs, Press Release, March 21, 2019, <https://www.justice.gov/opa/pr/medstar-health-pay-us-35-million-resolve-allegations-it-paid-kickbacks-cardiology-group> (Accessed 3/4/20); "Covidien to Pay Over \$17 Million to The United States for Allegedly Providing Illegal Remuneration in the Form of Practice and Market Development Support to Physicians," Department of Justice, Office of Public Affairs, Press Release, March 11, 2019, <https://www.justice.gov/opa/pr/covidien-pay-over-17-million-united-states-allegedly-providing-illegal-remuneration-form> (Accessed 3/4/20).
- 12 Department of Justice, Office of Public Affairs, January 9, 2020.
- 13 *Ibid.*
- 14 "HealthSouth Settles Fraud Case Over Medicare Billings With Department of Justice for \$325 Million," Kaiser Health Foundation, Kaiser Health News, June 11, 2009, <https://khn.org/morning-breakout/dr00027444/> (Accessed 3/4/20).
- 15 Department of Justice, Office of Public Affairs, January 9, 2020; "Individual Accountability for Corporate Wrongdoing" By Sally Quillian Yates, Letter to Assistant U.S. Attorneys General and All United States Attorneys, September 9, 2015.
- 16 Department of Justice, Office of Public Affairs, January 9, 2020.
- 17 "Fraud Statistics – Overview" Department of Justice, <https://www.justice.gov/opa/press-release/file/1233201/download> (Accessed 3/2/20).
- 18 *Ibid.*
- 19 *Ibid.*

**FREE EBOOK DOWNLOAD**  
Health Capital Topics 2019

Visit [www.healthcapital.com](http://www.healthcapital.com)

This book reviews and discusses subjects in the ever-changing U.S. healthcare industry and how they may affect healthcare organizations. Topics include value-based reimbursement; the latest regulatory pronouncements; emerging healthcare organizations; and much more.

**CLICK**

**GET IT NOW**

**HCC**  
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 25 years of experience providing valuation, financial, transaction and strategic advisory services nationwide in over 2,000 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.



**[Jessica L. Bailey-Wheaton](#)**, Esq., is Senior Vice President & General Counsel of HCC, where she focuses on project management and consulting services related to the impact of both federal and state regulations on healthcare exempt organization transactions, and 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. She has presented before associations such as the American Bar Association and NACVA.



**[John R. Chwarzinski](#)**, MSF, MAE, is Senior Vice President of HCC, where he focuses on the areas of valuation and financial analysis of healthcare enterprises, assets and services. Mr. Chwarzinski holds a Master's Degree in Economics from the University of Missouri – St. Louis, as well as, a Master's of Science in Finance Degree from the John M. Olin School of Business at Washington University in St. Louis. He has presented before associations such as the National Association of Certified Valuators and Analysts; the Virginia Medical Group Management Association; and, the Missouri Society of CPAs. Mr. Chwarzinski's areas of expertise include advanced statistical analysis, econometric modeling, and economic and quantitative financial analysis.



**[Daniel J. Chen](#)**, MSF, CVA, focuses on developing Fair Market Value and Commercial Reasonableness opinions related to healthcare enterprises, assets, and services. In addition he 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 and ancillary services and technical component (ASTC) revenue streams. Mr. Chen holds the Certified Valuation Analyst (CVA) designation from NACVA.



**[Paul M. Doelling](#)**, MHA, FACMPE, has over 25 years of healthcare valuation and operational management experience and he has previously served as an administrator for a number of mid to large-sized independent and hospital-owned physician practice groups. During that time, he has participated in numerous physician integration and affiliation initiatives. Paul has authored peer-reviewed and industry articles, as well as served as faculty before professional associations such as the Medical Group Management Association (MGMA) and the Healthcare Financial Management Association (HFMA). He is a member of MGMA, as well as HFMA where he previously served as President of the Greater St. Louis Chapter.