

Legislative Update and Recent Enforcement Actions

Texas Association for Healthcare Financial Administration 2015 Seminar Series

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Agenda

1. Pending Legislation
2. Recent Enforcement Activity (time permitting)



PENDING LEGISLATION

- Pending is emphasized – NOT THE LAW (YET)
- Committee assignments made in early February
- Legislative Filing Deadline was March 13, 2015
- Just a random sample of pending legislation and possible trends
- Less than 15% of proposed legislation actually becomes law



Texas Legislature – Pending Legislation

Hospitals

S.B. 424 (Relating to the licensing and regulation of hospitals) (passed by Senate on March 17, 2015)

- The DSHS shall adopt a schedule for the inspection of each hospital so that 10% of the hospitals are scheduled to be inspected each year. In scheduling a hospital for inspection, the DSHS must prioritize the inspection of hospitals in accordance with risk factors, including:
 - The date of last inspection,
 - The # of deficiencies noted during the previous inspection, and
 - The # of complaints received regarding a hospital.



Texas Legislature – Pending Legislation

Hospitals

S.B. 424 (Relating to the licensing and regulation of hospitals)

The DSHS shall conduct an inspection of each licensed hospital at least once every 3 years if:

1. It is not accredited by a CMS-approved accreditation body; and
2. Does not meet the Medicare Conditions of Participation.

The DSHS may request a copy of a hospital's latest accreditation survey at any time.



Texas Legislature – Pending Legislation

Hospitals

S.B. 424 (Relating to the licensing and regulation of hospitals)

- The DSHS may issue an emergency order to suspend a license if the DSHS has reasonable cause to believe that the conduct of a license holder creates an immediate danger to public health or safety.
- The emergency suspension is effective immediately without a hearing on notice to the license holder.
- Before issuing an emergency order to suspend a license, the DSHS must provide the hospital the opportunity to respond to the DSHS' findings.



Texas Legislature – Pending Legislation

Hospitals

S.B. 424 (Relating to the licensing and regulation of hospitals)

- The DSHS may request the AG to bring an action in the name of the State for the appointment of a trustee to operate a hospital if (1) the hospital is operating without a license; (2) the DSHS has suspended or revoked the license; (3) license suspension or revocation procedures are pending and the DSHS determines that an imminent threat to patients exists; (4) the DSHS determines that an emergency exists that presents an immediate threat to patients; or (5) the hospital is closing and arrangements for relocation of patients to other licensed institutions have not been made before closure.



Texas Legislature – Pending Legislation

Hospitals

H.B. 424 (relating to the public’s ability to access the results of a hospital inspection, survey, or investigation conducted by the Department of State Health Services)

- The Department shall make the findings of an inspection, a survey, or an investigation conducted available to the public on the department’s Internet website.



Texas Legislature – Pending Legislation

Hospitals

H.B. 3903 (Relating to the requirement that a hospital allow a patient to designate a caregiver to receive aftercare instruction regarding the patient)

- On admission or at the time a patient is discharged, the hospital shall provide a patient the opportunity to designate a caregiver.
- If a caregiver is designated, the hospital shall (1) document the contact information of the caregiver and the caregiver's relationship to the patient in the patient's medical record and (2) request written authorization from the patient to disclose health information to the caregiver.
- If the patient declines to designate a caregiver, the hospital must note it in the medical record.



Texas Legislature – Pending Legislation

Hospitals

H.B. 3903 (Relating to the requirement that a hospital allow a patient to designate a caregiver to receive aftercare instruction regarding the patient)

- Caregiver can be changed at any time and change must be noted in medical record.
- Hospital must notify caregiver of discharge or transfer beforehand.
- Not later than 24 hours before a patient's discharge from a hospital, the hospital shall consult with the designated caregiver and the patient regarding the designated caregiver's capabilities and limitations and issue a discharge plan that describes the patient's aftercare needs.
- A discharge plan must include: (1) the name and contact information of the designated caregiver; (2) a description of the aftercare tasks included in the discharge plan, taking into account the capabilities and limitations of the caregiver; and (3) the contact information for any health care services, community resources, and long-term services and supports necessary to implement the patient's discharge plan.



Texas Legislature – Pending Legislation

Hospitals

H.B. 3903 (Relating to the requirement that a hospital allow a patient to designate a caregiver to receive aftercare instruction regarding the patient)

- The hospital shall provide the designated caregiver instruction in the aftercare tasks described in the discharge plan in a manner that is culturally competent and in accordance with applicable requirements to provide language access services. The instruction may be provided in person or by video or other technology-based method. If a hospital offers instruction using a method other than in-person instruction, the designated caregiver may choose the method by which the designated caregiver receives the instruction.
- Training and instruction provided to a designated caregiver must: (1) be provided using clear, nontechnical language; and (2) include: (A) a demonstration of each aftercare task that is performed by a hospital employee or a person in a contractual relationship with the hospital who is authorized by the hospital to perform the task; and (B) an opportunity for the designated caregiver and patient to ask questions and receive answers regarding the aftercare tasks.
- The hospital shall document in the patient's medical record the instruction given, including the date and time the instruction was given to the patient and designated caregiver.



Texas Legislature – Pending Legislation

Hospitals

H.B. 1008 (Relating to the establishment of a program for the transfer of unused drugs to public hospitals)

- To the extent allowed by Federal law, the DSHS shall establish a program under which a hospital or another health care facility may transfer to the DSHS or another designated entity unused drugs that the facility received reimbursement for the cost of under the Medicaid program.
- No payment for the transfer.



Texas Legislature – Pending Legislation

Hospitals

S.B. 373 and H.B. 938 (Relating to increased oversight by the DSHS of hospitals that commit certain violations) (Passed by Senate on March 23, 2015)

- If the DSHS finds that a hospital has committed a violation that resulted in a potentially preventable adverse event which is reportable under Chapter 98 of the Texas Health & Safety Code, the DSHS shall require the hospital to develop and implement a plan for approval by the DSHS to address the deficiencies that may have contributed to the preventable adverse event. The plan shall include:
 - Staff training and education;
 - Supervision requirements for certain staff;
 - Increased staffing requirements;
 - Increased reporting to the DSHS; and
 - A review and amendment of hospital policies



Texas Legislature – Pending Legislation

Hospitals

H.B. 3820 (relating to safe patient handling practices)

- The governing body of a hospital or the quality assurance committee of a nursing home shall adopt, ensure implementation of, and maintain at all times a program to prevent injuries to health care workers who are responsible for performing patient handling.
- "Patient handling" means the lifting, transferring, repositioning, or moving of all or part of a patient's body with or without the assistance of equipment.



Texas Legislature – Pending Legislation

Hospitals

H.B. 1901 relating to the withdrawal or withholding of life-sustaining treatment from a pregnant patient)

- A person may not withdraw or withhold life-sustaining treatment from a pregnant patient regardless of whether there is irreversible cessation of all spontaneous brain function of the pregnant patient; and if the life-sustaining treatment is enabling the unborn child to mature.
- The hospital or other applicable health care provider shall notify the attorney general if the life-sustaining treatment of a pregnant patient is at issue.
- Not later than 24 hours after receipt of the notice, the attorney general shall appoint an attorney ad litem to represent the unborn child 's interests.



Texas Legislature – Pending Legislation

Hospitals

S.B. 1445 (relating to regulation of certain segments of the health care system)

- A contract between an insurer and a hospital, hospital system, health care facility, or physician group practice may not restrict the ability of an insurer to furnish information to an insured concerning the cost of a procedure or quality of care at the hospital, hospital system, health care facility, or physician group practice.
- The commissioner shall adopt reasonable rules establishing minimum standards related to disclosures a hospital, hospital system, health care facility, or physician group practice must make to an insured relating to the amount or charge or estimate of the amount or charge, including any facility fees, for an admission to or procedure or service performed at the hospital, hospital system, health care facility, or physician group practice for which the insured may be financially responsible.



Texas Legislature – Pending Legislation

Hospitals

S.B. 1445 (relating to regulation of certain segments of the health care system)

- The commissioner shall adopt reasonable rules establishing minimum standards, including the existence and nature of the affiliation, for disclosures a health care provider must make on referral of an insured to an affiliated provider.
- The commissioner shall adopt reasonable rules requiring a hospital to provide to an insured written notice of the amount or estimate of the amount of a professional fee, if any, including a facility fee, that the hospital may charge, in addition to and separate from the professional fee charged by the physician or health care provider who treats the insured, for a service provided at the hospital.
- The commissioner shall adopt reasonable rules requiring certain information be included in the notice (a), including an explanation that the insured may incur financial liability that is greater than the insured might incur if the service provided at the hospital was not provided at the hospital or facility.



Texas Legislature – Pending Legislation

Hospitals

S.B. 1160 (relating to implementation of a workplace violence prevention plan)

- The DSHS shall establish policies and procedures to require each hospital to develop and implement a workplace violence prevention plan to protect health care providers and hospital employees from violent behavior occurring at the hospital.
- The department shall review each hospital's workplace violence prevention plan submitted once a year to ensure the plan remains effective and appropriate for that hospital.



Texas Legislature – Pending Legislation

Hospitals

H.B. 695 (Relating to the carrying of a concealed handgun on hospital or nursing home premises)

- A private hospital or nursing home may adopt rules prohibiting a concealed handgun license holder from carrying a handgun on its premises only if:
 - The facility stations a commissioned security officer who is wearing the officer's uniform and carrying the officer's weapon in plain view at each entrance to the facility; and
 - The facility gives effective notice under Section 30.06 of the Penal Code.
- Under current Section 30.06 of Penal Code, it is an offense if the license holder: (1) carries a handgun on the property of another without effective consent; and (2) received notice that: (A) entry on the property by a license holder with a concealed handgun was forbidden; or (B) remaining on the property with a concealed handgun was forbidden and failed to depart. (b) For purposes of this section, a person receives notice if the owner of the property or someone with apparent authority to act for the owner provides notice to the person by oral or written communication.



Texas Legislature – Pending Legislation

Hospitals

S.B. 359 (Relating to the authority of a peace officer to apprehend a person for emergency detention and the authority of certain facilities to temporarily detain a person with mental illness) (passed by Senate April 9, 2015)

- A facility may detain a person who voluntarily requested treatment or who lacks capacity to consent to treatment if:
 - The person expresses a desire to leave the facility or attempts to leave before the examination or treatment is completed and
 - A physician at the facility (1) has reason to believe and does believe that the person has mental illness and because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and (2) believes that there is not sufficient time to file an application for emergency detention.
- The facility shall notify the person if it intends to detain the person under this section.



Texas Legislature – Pending Legislation

Hospitals

S.B. 359 (Relating to the authority of a peace officer to apprehend a person for emergency detention and the authority of certain facilities to temporarily detain a person with mental illness) (passed by Senate on April 9, 2015)

- The physician shall document a decision to detain a person in the patient's medical record. The medical record must contain (1) a statement that the physician has reason to believe and does believe that the person is mentally ill; (2) a statement that the physician has reason to believe that the person evidence a substantial risk of serious harm to self or others; (3) a specific description of the risk of harm; (4) a statement that the physician has reason to believe that the risk of harm is imminent unless the person is immediately restrained; (5) a statement that the physician's beliefs are derived from specific behavior, overt acts, attempts or threats that were observed by or reliably reported to the physician; and (6) a detailed description of the specific behavior, acts, attempts or threats.
- Period of detention may not exceed 4 hours.
- The facility shall release the patient by end of 4 hour period unless the facility arranges for a peace officer to take the person into custody.
- Facility that acts in good faith and without malice is not civilly or criminally liable.



Texas Legislature – Pending Legislation

Hospitals

H.B. 2585 (Relating to implementation of a rapid response system in certain hospitals):

A hospital shall implement and enforce a policy that prescribes procedures for a health care provider at the hospital to recognize and respond to changes in a patient's condition that is worsening. The policy must:

1. Provide a method of recognition of and response to a patient's condition if it appears to worsen.
2. Include written criteria describing warning signs and for provider to seek additional assistance.



Texas Legislature – Pending Legislation

Hospitals

H.B. 4100 (Relating to advance directives and health care treatment decisions):

- Upon admission, a provider shall provide a patient written notice of the facility's policies regarding Do-Not-Attempt-Resuscitation Orders.
- Before placing or removing a DNAR order in a patient's record, the facility shall inform the patient or patient's surrogate in accordance with a written policy.
- If patient disagrees, need to refer to Hospital's ethics committee
- Form policies and advance directives set forth in bill.



Texas Legislature – Pending Legislation

Hospitals

H.B. 1670 (Relating to the possession and removal of a placenta from a hospital or birthing center):

A hospital shall allow a woman to take possession of and remove from the facility the delivered placenta if:

1. The woman tests negative for infectious diseases;
2. The person taking the placenta signs a form acknowledging that (A) the person has received information concerning the spread of blood-borne diseases and (B) the placenta is for personal use.

The form should be retained by the hospital in the patient's medical records.

A person may not sell the placenta.



Texas Legislature – Pending Legislation

Health Information Exchanges

H.B. 1319 (Relating to the use of health information technology):

- The use of, failure to use or existence of a health information exchange does not establish a standard of care for a provider to obtain, use or disclose patient information.
- A provider is not liable for damages related to the provider's failure to obtain information from a HIE, disclosure or failure to disclose information to a HIE, reliance on inaccurate information from a HIE, a HIE's failure to comply with privacy laws.



Texas Legislature – Pending Legislation

Medicaid Expansion

H.B. 977 (Relating to expanding eligibility for medical assistance to certain persons under PPACA)

- To the extent funds are appropriated to the Commission for that purpose, the Commission shall provide medical assistance to all persons who apply for that assistance for whom federal matching funds are available under PPACA to provide that assistance.
- Does not authorize the Commission to provide medical assistance to undocumented immigrants.



Texas Legislature – Pending Legislation

Graduate Medical Education

H.B. 1489 (Relating to measures to enhance graduate medical education in Texas)

- Establishment of a grant program to provide grants to teaching hospitals for graduate medical residency training programs to increase the number of physicians that are determined to be at a critical shortage level in Texas.



Texas Legislature – Pending Legislation

Graduate Medical Education

S.B. 18 (relating to support or enhance graduate medical education in Texas)

- Passed by the Senate
- Creates a Trust Fund to support graduate medical education
- A hospital may partner with an existing graduate medical education program to plan a new graduate medical education program



Texas Legislature – Pending Legislation

Telehealth

3 Telehealth Bills Pending

- HB 2348
 - An employee benefit plan may not:
 - Prohibits a physician (including non-profit health organization) from charging for telephone consultations with a covered patient,
 - Deny payment to a physician for a medically necessary telephone consultation with a covered patient if that plan pays another person for a telephone consultation with a covered patient, or
 - Discriminate against a physician in determining payment amount for medically necessary telephone consultation if plan pays another person for a phone consultation with another covered patient
 - Physician/Practice may NOT charge for appointment scheduling; appointment reminders or responses to billing or payment inquiries



Texas-Legislature — Pending Legislation

Telehealth

- HB 3519 and HB 3476 VERY similar
 - 3519 – Telemonitoring services only available to a person who:
 - Is diagnosed with a condition for which Commission makes an evidence-based determination that monitoring through home telemonitoring services is cost-effective and feasible; and
 - Exhibits two or more risk factors (ex: such as 2 or more hospitalizations in prior 12 mo period; frequent ER visits, limited or absent informal support systems, living alone or being home alone for extended periods)
 - Commission may conduct pilot projects to collect evidence regarding effectiveness of using home telemonitoring services to monitor certain conditions

Texas-Legislature — Pending Legislation

Telehealth

- HB 3476 – very similar to HB 3519 but only differences are (1) the reference to the individuals who must be covered specifically defined, (2) left up to the commissioner to develop the program (i.e. no requirement that a pilot project be established), and (3) Commission shall require reimbursement for telemedicine services and cannot deny reimbursement if medically necessary
- Telemonitoring services must be available to a person who is:
 - Elderly individual
 - Individual with special healthcare needs; OR
 - Individual who is diagnosed with one or more of the following conditions:
 - Pregnancy; diabetes, heart disease, cancer, chronic obstructive pulmonary disease, hypertension, congestive heart failure, mental illness or serious emotional disturbance, asthma, myocardial infarction or stroke AND
- Exhibit two or more of the risks factors (Note: same as HB 3519)

Texas Legislature – Pending Legislation

Insurance Coverage

H.B. 1041 (Relating to administrative and judicial review of certain Medicaid reimbursement disputes)

- A provider has the right to a contested case hearing to dispute the amount of a reimbursement rate paid to the provider under the fee-for-service Medicaid program or by a managed care organization under the managed care Medicaid program if the provider maintains that the rate is below the rate necessary to recover the provider's reasonable operating expenses and to realize a reasonable return on the provider's investments that is sufficient to ensure confidence in the provider's continued financial integrity.
- Exhaustion of contractual remedies with a managed care organization or its agent is not a prerequisite to a contested case hearing.
- Judicial review is available, except that party seeking judicial review must file suit not later than the 45th day after the date notice of the decision made by the hearing officer was mailed.



Texas Legislature – Pending Legislation

Insurance Coverage

H.B. 694 (Relating to coverage for supplemental breast cancer screening under certain health benefit plans)

- An issuer of a health benefit plan that provides coverage for mammography, including coverage for low-dose mammography must also offer to provide coverage for supplemental breast cancer screening as part of an annual well-woman examination if the provider screening the patient for breast cancer finds that the patient has
 - Dense breast tissue;
 - Additional risk factors determined by the Health and Human Services Commissioner that warrant supplemental breast cancer screening beyond mammography.
- An additional premium may be charged for the supplemental breast cancer screening.
- Applies to health benefit plans that provide benefits for medical or surgical expenses and small employer health benefit plans.



Texas Legislature – Pending Legislation

Out-of-Network Legislation

H.B. 616 (Relating to Payment of Out-of-Network Charges)

- An insurer must use a charge-based methodology for computing a payment for a service provided by an out-of-network provider if the provider submits a clean claim that includes a certification of the usual and customary charge for the service determined by a database provider or a certification that there are not sufficient reported charges in the database provider’s database to establish the usual and customary charge.
- “Usual and customary charge” means a charge for a service, classified by geozip area (all areas with same 1st 3 digits of zip code) and CPT code, that is in the 90th percentile of the charges for that service reported to a database provider.
- “Database provider” means a nonprofit database provider certified by the TDI.



Texas Legislature – Pending Legislation

Out-of-Network Legislation

H.B. 616 (Relating to Payment of Out-of-Network Charges)

- If an OON provider submits a clean claim that includes a database certification indicating that the billed charge is not higher than the usual and customary charge, the insurer shall pay the lesser of the billed charge or the usual and customary charge minus insured's responsibility.
- If the certification indicates the charge is higher than the usual and customary charge, the insurer shall pay the billed charge if the billed charge is justifiable considering special circumstances under which the services are provided. If no special circumstances, the insurer shall pay usual and customary charge.
- If the certification indicates the database provider does not have sufficient information, insurer shall pay 80% of the billed charge or an amount equal to the 90th percentile of the charges for the service reported by the designated reimbursement information organization for providers in same geozip, whichever is less.



Texas Legislature – Pending Legislation

Out-of-Network Legislation

H.B. 574 (Relating to Operations of Managed Care Plans with Respect to Providers):

- An insurer may not terminate participation of a provider solely because the provider informs an enrollee of the full range of providers available to the enrollee, including OON providers.
- An insurer may not terminate, or threaten to terminate, an insured's participation in a plan solely because the insured uses an OON provider.
- An insurer may not prohibit, penalize, terminate or otherwise restrict a preferred provider from communicating with an insured about the availability of OON providers.
- An insurer's contract with a preferred provider may require that before an OON referral is made, the provider inform the insured that (1) the insured may choose an OON provider; (2) the insured may have a higher out-of-pocket expense with an OON provider and (3) whether the provider has a financial interest in the OON provider.



Texas Legislature – Pending Legislation

Out-of-Network Legislation

H.B. 574 (Relating to Operations of Managed Care Plans with Respect to Providers):

- On request, an insurer shall provide to a practitioner whose participation in a preferred provider benefit plan is being terminated all information on which the insurer wholly or partly based the termination, including the economic profile of the preferred provider, the standards by which the provider is measured, and the statistics underlying the profile and standards.



Texas Legislature – Pending Legislation

Freestanding Emergency Medical Care Facilities

S.B. 425 (Relating to health care information provided by and notice of facility fees charged by freestanding emergency medical care facilities):

A FER shall post a notice that states the following:

- That the FER is a FER;
- That the FER charges rates comparable to a hospital ER;
- That the FER and its physicians may not be participating providers in the patient's health plan; and
- That the FER's physicians may bill separately from the FER.



Texas Legislature – Pending Legislation

Freestanding Emergency Medical Care Facilities

S.B. 425 (Relating to health care information provided by and notice of facility fees charged by freestanding emergency medical care facilities):

- The notice must be posted prominently and conspicuously at the FER's
 - Primary entrance
 - Each patient treatment room; and
 - At each location at which a person pays for health care services.

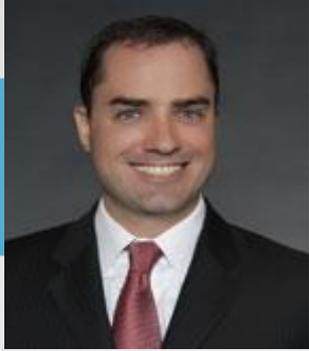


Texas Legislature – Pending Legislation

Miscellaneous Legislation

- H.B. 3445: Empowers Medicaid to develop incentives to encourage Medicaid recipients to engage in health behaviors, which may include enhanced benefits, HSAs or similar rewards.
- H.B. 2131: Center of Excellence for Fetal Care and Healthy Outcomes.
- S.B. 1839: Medical Marijuana Legislation
- S.B. 751: Delegation of prescriptive authority to NPs and PAs.
- H.B. 1319: Limitation of Liability Relating to Health Information Exchanges





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Josh and Ashley provide counsel to health care providers on complex operational, transactional and compliance issues. They have experience advising hospitals, ambulatory surgery centers, independent diagnostic testing facilities, laboratories, pharmacies, physicians and other health care providers on various issues, including matters implicating the Federal Anti-Kickback Statute, the Physician Self-Referral ("Stark") Statute, the Texas Illegal Remuneration Statute, The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the False Claims Act, and the Emergency Medical Treatment and Active Labor Act ("EMTALA"), among many others. Josh and Ashley also advise clients with respect to reimbursement issues and payor audits. Their transactional experience includes drafting and negotiating a variety of health care contracts, including professional services agreements, physician employment agreements, asset purchase agreements, management and co-management agreements, business associate agreements, operating agreements, and equipment and space leases, among others. Josh and Ashley also assist clients in the formation and syndication of hospitals, ASCs, joint ventures, pharmacies, and laboratories.

Josh and Ashley are both Board Certified in Health Law by the Texas Board of Legal Specialization.



RECENT ENFORCEMENT ACTIONS



Qui Tam/Enforcement Actions

- 62 healthcare qui tam actions filed from 1987 to 1992.
- In 2011 alone, there were 471.
- In 2012, there were 412.
- FCA awards 15-30% of the recovery to whistleblowers.
- Medicare Incentive Reward Program:
 - CMS can pay whistleblowers an additional 10%.
 - Proposed Rule would expand the amount to 15% up to the first \$66 million received (potential \$9.9 million recovery for whistleblower).



Qui Tam/Enforcement Actions 2013 and 2014

- 752 new *qui tam* matters filed in 2013.
- Total federal health care recoveries under the FCA exceeded \$2.5 billion in 2013 and \$2.3 billion in 2014
 - 2014 was the 5th consecutive year FCA recoveries from health care fraud exceeded \$2 billion.
- Total rewards paid to *qui tam* relators in health care cases was \$345 million in 2013 and \$435 million in 2014.



Recent OIG Statistics

| OIG Action | FY09 | FY10 | FY11 | FY12 | FY13 | Total |
|-----------------------------------|---------------|-----------------|-----------------|---------------|----------------|-----------------------|
| Criminal Actions | 671 | 647 | 723 | 778 | 960 | 3,779 |
| Civil Actions | 394 | 378 | 382 | 367 | 472 | 1,993 |
| Exclusions | 2,556 | 3,340 | 2,662 | 3,131 | 3,214 | 14,903 |
| HHS Investigative Receivables | \$3.0 Billion | \$3.2 Billion | \$3.6 Billion | \$4.3 Billion | \$4.0 Billion | \$18.2 Billion |
| Non-HHS Investigative Receivables | \$1.0 Billion | \$576.9 Million | \$952.8 Million | \$1.7 Billion | \$1.03 Billion | \$5.2 Billion |
| Total Investigative Receivables | \$4.0 Billion | \$3.8 Billion | \$4.6 Billion | \$6.0 Billion | \$5.0 Billion | \$23.5 Billion |

Statistics are for cases in which there was a settlement with or judgment for the United States, and in which the OIG's Office of Investigations was involved.



HEAT Strike Force Activity

The Health Care Fraud Prevention and Enforcement Action Team (HEAT) was started in 2009 by HHS and DOJ to strengthen programs and invest in new resources and technologies to prevent and combat health care fraud, waste, and abuse. Hallmarks include data-driven analyses and interagency collaboration.

| Location | Criminal Actions | Indictments | Money* |
|--------------|------------------|--------------|------------------------|
| Miami | 622 | 796 | \$881,561,175 |
| Los Angeles | 60 | 135 | \$48,295,354 |
| Detroit | 111 | 217 | \$60,515,775 |
| Houston | 56 | 99 | \$20,529,564 |
| New York | 31 | 84 | \$112,298,203 |
| Baton Rouge | 43 | 83 | \$39,166,607 |
| Tampa | 30 | 42 | \$56,056,891 |
| Dallas | 17 | 57 | \$30,277,662 |
| Chicago | 9 | 53 | \$4,825,501 |
| Total | 979 | 1,566 | \$1,203,526,733 |

Statistics are for cases in which there was a settlement with or judgment for the United States, and in which the OIG's Office of Investigations was involved between 2009 and 2013.



Qui Tam/Enforcement Actions

- Most relators are employees (more than 75% according to most recent surveys).
- Some are employed or affiliated with competitors.
- According to the HHS' Health Care Fraud and Abuse Program Annual Report released in February 2014, for every dollar spent on health care-related fraud and abuse in the last three years, the government recovered \$8.10.



Qui Tam/Enforcement Actions

- Just in September, an Assistant US Attorney for the DOJ's Criminal Division, announced that the DOJ will be stepping up its review of False Claims Act (FCA) qui tam complaints.
- All new qui tam complaints are shared by the Civil Division with the Criminal Division as soon as the cases are filed for immediate review.
- The Criminal Division will use criminal investigative tools (e.g., search warrants, wire taps, undercover operations and confidential informants) that it will be able to contribute to FCA cases.
- "Cases involving fraud by executives at health care providers, such as hospitals, are a high priority"



Somewhat Recent Cases

Halifax - March 2014

- Background: a Compliance Officer at Halifax Health Medical Center filed a Qui Tam action alleging that the Hospital gave prohibited bonuses to least 6 doctors under employment agreements. It is alleged the amount of the bonuses increased when the doctors referred more patients to the Hospital.
- A Federal Court has ruled the case can proceed even though some of the claims were submitted to Medicaid and not Medicare.
- Government has intervened in the case and the parties reached a \$85 million settlement on March 3, 2014.



Halifax (Cont' d)

- As a bonus, each oncologists would receive a portion of a total bonus pool that was equal to 15 percent of the “operating margin” of the overall medical oncology program
- “Operating margin” meant revenue minus direct expenses of the overall program, determined on a basis that included “designated health services,” as defined by the Stark Law, including prescription drugs and outpatient services not personally performed by the medical oncologists themselves.



U.S. ex rel. Drakeford v. Tuomey

2013

- Surgeons begin development of an ASC and Tuomey Health System was concerned about losing volume.
- Hospital hires surgeons as employees
 - Part-time employment during surgical procedures; surgeons maintained office practice separately
 - Compensation to physicians: fixed salary, plus 80% of collections, plus quality incentives
 - DOJ alleged that compensation exceeded 100% of actual collections (and was up to 140% of collections)
- Hospital internal documents projected losses on all employment agreements



U.S. ex rel. Drakeford v. Tuomey

- DOJ argues that compensation is not FMV because “the hospital’s motivation in entering into these part-time agreements was to avoid losing the referrals”
 - While Stark Law is strict liability, the DOJ looked at motivation of parties
- Hospital obtained multiple valuation analyses
- During the trial, the hospital argued reliance on advice of counsel.
- Jury found Tuomey submitted a total of 21,730 Medicare claims that were illegal due to the compensation arrangements
- Result: Hospital pays \$237 million for false claims.



Enforcement Activity

South Shore Physician Hospital Organization (SSPHO) (January 2015)

- SSPHO and its member organizations, South Shore Hospital, Inc. and Physicians Organization of the South Shore, Inc. paid kickbacks in the form of cash grants to doctors who agreed to make referrals to SSPHO providers.
- From 2001 to 2010, SSPHO approved 103 separate recruitment grants to 33 different physician groups. The recruitment grant program requested that grant recipients refer patients to participating providers, which included the South Shore Hospital.
- \$1.775 million settlement
- Additional Information: <http://www.justice.gov/usao-ma/pr/south-shore-physicians-hospital-organization-pay-1775-million-alleged-kickbacks-patient>



Enforcement Activity

Nason Medical (January 2015)

- Nason Medical, out of Charleston, South Carolina, and two of its owners, Dr. Baron S. Nason and Robert T. Hamilton allegedly:
 - Submitted claims to Medicare and TRICARE for services that were provided by physician assistants, as though the services were provided by physicians. Both Medicare and TRICARE pay 85% of the physician fee schedules for services provided by mid-level providers like physician assistants;
 - Submitted claims for testing that was not medically indicated including laboratory tests and potentially harmful CT scans;
 - Submitted claims for radiological services provided by a radiology technician who did not hold a current South Carolina license; and
 - Submitted claims for Tetanus Immunoglobulin when Tetanus Toxoid was given which is considerably less expensive;
- \$1.021 million settlement
- Qui Tam
- Additional Information: <http://www.justice.gov/usao/sc/news/1.14.15.nason.html>



Enforcement Activity

Hollywood Pavilion (November 2014)

- Former chief operating officer of a Miami-area hospital pleaded guilty for his role in a mental health care fraud scheme that resulted in the submission of more than \$67 million in fraudulent claims to Medicare by a psychiatric hospital located in Hollywood, Florida.
- HP submitted false and fraudulent claims to Medicare for treatment that was not medically necessary or not provided to patients. The COO supervised HP's staff at both its inpatient and outpatient facilities, where Medicare beneficiaries were admitted to HP regardless of whether they qualified for mental health treatment, and were often admitted before seeing a doctor.
- HP obtained Medicare beneficiaries from across the country by paying bribes and kickbacks to various patient brokers. The COO instructed the patient brokers to falsify invoices and marketing reports in an effort to hide, and cover up the true nature of the bribes and kickbacks they were receiving from HP. 4 colleagues have already been sentenced to prison terms ranging from 6-25 years for the same offenses.
- Additional Information: <http://www.justice.gov/opa/pr/miami-area-hospital-chief-operating-officer-pleads-guilty-67-million-mental-health-care-fraud>



Enforcement Activity

Shelby Regional Medical Center-Tyler, Texas (November 2014)

- Former CFO of Shelby Regional Medical Center in Center oversaw the implementation of electronic health records for the hospital and was responsible for attesting to the meaningful use of electronic health records in order to qualify to receive incentive payments under Medicare's Electronic Health Record (EHR) Incentive Program.
- On Nov. 20, 2012, White knowingly made a false statement to Medicare falsely representing that the hospital was a meaningful user of electronic health records, when the hospital did not meet the meaningful use requirements. As a result, Shelby Regional Medical Center received \$785,655.00 from Medicare.
- Faces up to 5 years in prison.
- Additional Information: <http://www.justice.gov/usao/txe/News/2014/edtx-hcf-white-111314.html>

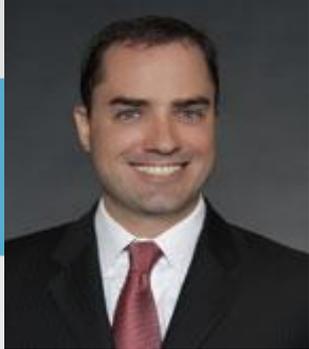


Enforcement Activity

Riverside General Hospital -Houston, Texas (October 2014)

- Hospital President and colleagues operated a scheme to defraud Medicare beginning in 2005 and continuing until June 2012. The defendants caused the submission of false and fraudulent claims for partial hospitalization program (PHP) services to Medicare through the hospital. A PHP is a form of intensive outpatient treatment for severe mental illness.
- Specifically, evidence at trial demonstrated that the Medicare beneficiaries for whom Riverside and its satellite locations billed Medicare for PHP services did not qualify for or need PHP services. Moreover, the Medicare beneficiaries rarely saw a psychiatrist and did not receive intensive psychiatric treatment. In fact, some of the Medicare beneficiaries were suffering from Alzheimer's and could not actively participate in any treatment even if they actually qualified to receive PHP services.
- Kickbacks were paid to patient recruiters and to owners and operators of group care homes in exchange for those individuals delivering ineligible Medicare beneficiaries to the hospital's PHPs.
- Additional Information: <http://www.justice.gov/opa/pr/president-houston-hospital-and-three-others-convicted-158-million-medicare-fraud-scheme>





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Josh and Ashley provide counsel to health care providers on complex operational, transactional and compliance issues. They have experience advising hospitals, ambulatory surgery centers, independent diagnostic testing facilities, laboratories, pharmacies, physicians and other health care providers on various issues, including matters implicating the Federal Anti-Kickback Statute, the Physician Self-Referral ("Stark") Statute, the Texas Illegal Remuneration Statute, The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the False Claims Act, and the Emergency Medical Treatment and Active Labor Act ("EMTALA"), among many others. Josh and Ashley also advise clients with respect to reimbursement issues and payor audits. Their transactional experience includes drafting and negotiating a variety of health care contracts, including professional services agreements, physician employment agreements, asset purchase agreements, management and co-management agreements, business associate agreements, operating agreements, and equipment and space leases, among others. Josh and Ashley also assist clients in the formation and syndication of hospitals, ASCs, joint ventures, pharmacies, and laboratories.

Josh and Ashley are both Board Certified in Health Law by the Texas Board of Legal Specialization.

