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The First 100 Days: A Renewed Commitment to Health Care Enforcement



Healthcare fraud enforcement, which has received much less media attention than Republican-led efforts to repeal and replace the Affordable Care Act during the first 100 days of President Donald Trump's administration, nevertheless had some key developments that provide signals for future trends in the space.

Budgeting for Healthcare Fraud and Abuse Prosecutions On March 16, 2017, the Executive Office of the President's Office of Management and Budget released its [proposed budget](#) for 2018, entitled "America First: A Budget Blueprint to Make America Great Again." The proposal included an overall decrease of about \$15 billion to the Department of Health and Human Services, representing about an 18% decrease from 2017 funding levels. Amid this overall decrease, however, the proposed budget would increase funding for the Health Care Fraud and Abuse Control Program (HCFAC) by more than 10%. HCFAC is a comprehensive program formed by the Health Insurance Portability and Accountability Act of 1996 to combat fraud against all health plans, both public and private, under the direction of the Attorney General and the Department of Health and Human Services' Inspector General. HCFAC coordinates federal, state, and local law enforcement activities with respect to healthcare fraud and abuse. The administration's budget proposal lauded the HCFAC Program's work, which it said "has allowed the Centers for Medicare & Medicaid Services in recent years to shift away from a 'pay-and-chase' model toward identifying and preventing fraudulent or improper payments from being paid in the first place." The proposal also noted that between 2014 and 2016, the HCFAC Program returned \$5 for every \$1 spent on fraud enforcement. The continued increase in HCFAC funding represents a continuation of a trend since 2009, in which the federal government has allocated increasing funding to HCFAC. In fact, over the past five years, HCFAC discretionary funding has more than doubled, from nearly \$310 million in 2012 to \$681 million in 2016. The President's budget proposal suggests that it has no plans to reverse this trend. **Exemplar Healthcare Fraud and Abuse Prosecutions** While enforcement resources play a critical role in determining enforcement priorities, the nature of prosecutions can also reveal enforcement trends. For example, in June 2016, the DOJ and HHS [announced](#) a national sweep that resulted in criminal and civil charges against 301 individuals for their alleged participation in healthcare fraud schemes involving approximately \$900 million in false billings. The charges were based on alleged schemes to submit claims to Medicare and Medicaid for treatments that were

medically unnecessary and often never provided, based upon patient beneficiary information obtained through kickbacks. While nothing has occurred during the Trump Administration's first 100 days that can match the scope and breadth of the June 2016 healthcare fraud takedown, new charges have continued apace, with the Department of Justice and Department of Health and Human Services announcing at least 83 indictments or settlements since January 20, 2017. Many of these announcements include charges or resolutions totaling into the millions of dollars, including:

- A conviction of a Dallas-area physician following jury trial in the Northern District of Texas on seven counts of healthcare fraud offenses totaling \$40 million;
- An indictment of a Chicago-area chiropractor in the Northern District of Illinois for allegedly billing \$10 million to Medicare and private insurers for nonexistent treatment;
- The indictment of a Miami-area home health care owner for alleged participation in a \$15 million healthcare fraud scheme involving claims for home health services not provided;
- Announcement of a \$11.4 million settlement by a medical equipment provider to resolve False Claims Act allegations that it provided equipment as part of a cross-referral kickback scheme with clinics;
- Announcement of a \$12.2 million settlement with a hospice provider to resolve allegations that it paid kickbacks in exchange for patient referrals in the Dallas area;
- A guilty plea by a Detroit-area physician for his role in a \$17.1 million Medicare fraud scheme involving medically unnecessary physician visits and drug prescriptions; and
- An indictment of sixteen individuals for their alleged role in a \$60 million Medicare fraud scheme involving false bills for hospice services and the recruitment of ineligible hospice beneficiaries through the payment of kickbacks to referring physicians and healthcare facilities.

Most if not all of these cases presumably involved investigations that started more than 100 days ago, but the filings further suggest that healthcare enforcement remains a priority of the Trump Administration. **Enforcement of the Affordable Care Act's 'Individual Mandate'** On January 20, 2017, his first day in office, President Trump signed an executive order entitled, "Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal." The executive order provided the Department of Health and Human Services and other executive agencies the authority and discretion to roll back aspects of the Affordable Care Act (ACA). Noting that the President intended to "seek the prompt repeal" of the ACA, the order directed agencies to "waive, defer, grant exemptions from, or delay the implementation of any provision or requirement of the Act that would impose a fiscal burden on any State or a cost, fee, tax, penalty, or regulatory burden on individuals, families, healthcare providers, health insurers, patients, recipients of healthcare services, purchasers of health insurance, or makers or medical devices, products, or medications." ACA's so-called "Individual Mandate" requires individuals to demonstrate that they had "essential minimum coverage" during the previous year or pay a penalty with their income tax return. Since passage of the ACA, the Internal Revenue Service, which was tasked with enforcement of the Individual Mandate, accepted and processed returns when the taxpayer failed to indicate whether or not he or she had coverage, but had made plans to begin rejecting such returns beginning in 2017. In response to President Trump's Executive Order, however, in February 2017, the IRS announced that it "has decided to make changes that would continue to allow electronic and paper returns to be accepted for processing in instances where a taxpayer doesn't indicate their coverage status." The IRS went on to remind taxpayers that while such returns would not be "systematically rejected by the IRS at the time of filing," the ACA and its Individual Mandate remain in effect. So for now, the Individual Mandate is just one of many areas of healthcare law that remain in flux. **Conclusion** Through its proposal to increase funding to HCFAC, it appears that the Trump Administration is willing to expand enforcement on fraud prevention and prosecution, particularly in areas such as health care fraud where enforcement programs have generated positive returns. HCFAC's high profile cases are not only a profit-center for the government's law enforcement efforts, but the group likely will continue to receive bipartisan support because of its efforts to reduce waste and abuse in the healthcare system. The healthcare cases that the DOJ and HHS/OIG have pursued in the early days of the Trump Administration reflect a continuance of the prior administration's pursuit of high-dollar frauds on the Medicare and Medicaid systems. What remains to be seen is how enforcement priorities will interact with the healthcare policy that the Trump Administration has put in the forefront, including the repeal and replacement of ACA. While the IRS' decision to accept returns that do not contain representations regarding healthcare insurance does not directly impact healthcare enforcement by the DOJ or HHS/OIG, it is an example of the uncertainty that the current climate brings. And, as the Republicans

regroup and perhaps once again attempt to put forth legislation that repeals and replaces the ACA, it will be worth paying close attention to whether that legislation impacts the menu of tools available to law enforcement, and the types of enforcement actions that we may see in the space.

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