

## 2007 HEALTH CARE FRAUD TOP TEN -HCCA

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- MY OPINIONS - BUT NOT OFFICIAL POLICY OF DEPARTMENT OF JUSTICE
- COMPLAINT OR INDICTMENT CONTAINS ALLEGATIONS - DEFENDANT HAS RIGHT TO PUT THE GOVERNMENT TO ITS PROOF AT TRIAL
- LIMITED IN WHAT I CAN SAY ABOUT PENDING CASES

## 10. THE STEADY FLOW OF FALSE CLAIMS CASES

- \$2.2 billion in recoveries in health care FCA cases in 2006 (largest ever) including \$920 million from Tenet
- Steady flow of qui tam whistleblowers filings- 500/year
- Courts are requiring quicker decisions on intervention, and imposing consequences for delay (In Re Cardiac Devices)
- Result-cases involving new qui tams occupy more law enforcement time and attention

## 9. PAYMENTS FROM DEVICE MANUFACTURERS

- USA ex rel. POTEET v. Medtronic/Sofamor-  
payments to doctors (2006 settlement)
- Rebates Paid to Hospitals-2007 Work Plan-Office of  
Audit Services-"We will visit several large vendors  
and determine the amount of rebates paid to hospitals  
in a given year. We will then examine a sample of  
Medicare hospital cost reports . . . "
- USA ex rel Schmidt v. Zimmer  
-payments to hospitals then distributed to doctors

## 8. PRESCRIPTION DRUG ISSUES-MEDICARE PART D

- False reporting(due 2/28/07 for 2006 to CMS)
- Counterfeit drugs
- Kickbacks to PDPs and MA plans
- False reports of costs and payments
- Fraud in the 28% subsidy to private employers

## 7. Pharmacy Benefit Managers

- MEDCO (2004 Consent Decree, Corporate Integrity Agreement and \$155 million settlement October 2006)
- ADVANCEPCS(Consent Decree, Corporate Integrity Agreement, \$137.5 million settlement September 2005)
- PBM relationship to pharmaceutical manufacturers-Pharmacia plea agreement 4/2/07 for payments to a PBM for formulary position

## 6. THE NEW FACE OF PROSECUTION: DEFERRED PROSECUTION AGREEMENTS AND DIVERSIONS

University of Medicine and Dentistry of New Jersey

Bristol-Myers Squibb (NJ)

Pharmacia (Mass.)(4/2/07)

United Memorial Hospital (Michigan)

Intermune (California) (off-label marketing)

## UMDNJ AGREEMENT 12/29/05

- The criminal complaint
- The deferred prosecution agreement
- The appointment of the Honorable Herbert Stern, as a Monitor
- All documents available on NJ US Attorneys Website <http://www.usdoj.gov/usao>
- Breaking news-[www.nj.com/news/umdnj](http://www.nj.com/news/umdnj) (this is a special report from the New Jersey Star-Ledger-like NJ's Enron, only health care)

## 5. THE NEW FACE OF PROSECUTION: MONITORS, AUDITORS, AND IROS

- UMDNJ-Judge Stern's role as Monitor
  - New general counsel, new compliance officer, new President
  - Quarterly reports
  - New prosecutions-State Senator Bryant and former Dean Dr. Michael Gallagher indicted for no-show job at UMDNJ in return for political support -3/29/07

## 4. THE NEW CORPORATE INTEGRITY AGREEMENT- Tenet Quality Focus

- Quality, Compliance, and Ethics Committee of the Board of Directors
- Policies and procedures designed to promote the delivery of patient care that meet professionally recognized standards of health care
  - Documentation
  - Measuring, analyzing and tracking quality indicators
  - Setting quality performance standards
- Clinical Quality Training

### 3. NEW RISK AREAS FOR FEDERAL PROSECUTION

- QUALITY(42 U.S.C. 1320a-5)
- DATA ACCURACY
- PAY FOR PERFORMANCE REPORTING
- MANDATED ADVERSE EVENT REPORTING
- CREDENTIALING-JCAHO INITIATIVE
- SAFETY, MONITORING, OVERSIGHT

### PAYING FOR QUALITY AND OUTCOMES IS THE FUTURE OF HEALTH CARE

- “REFORMING HEALTH CARE FOR THE 21<sup>st</sup> CENTURY” –National Economic Council 2/06
- -Consumer directed care (including Medicaid) subsidies, tax credits, HSAs-funding not control
- -transparency about quality and outcomes (e.g., Medicare Compare)
- “Pay for Performance: A Decision Guide for Purchasers”-AHRQ April 2006
- “Rewarding Provider Performance: Aligning Incentives in Medicine” Institute of Medicine

## 2.QUALITY AND OUTCOMES ARE THE FUTURE OF FRAUD ENFORCEMENT

- State ex rel. Raymer v. University of Chicago 2006 WL 2987118(10/6/06)(Illinois Circuit Court)
- Exceeding the licensed capacity of neonatal unit(by doublebunking ) can be a false claim
- claims based on certification of compliance
- Inspection defect and notice to University-knowing and intentional disregard of licensing regulations, while continuing to submit claims

## HOSPITAL BOARDS IN QUALITY AND PATIENT SAFETY

- “Getting the Board on Board: Engaging Patient Boards in Quality and Patient Safety” in 32 Joint Commission Journal on Quality and Patient Safety 179-187(April 2006)
- Interviews conducted with CEOs and Board Chairs at 30 hospitals in 14 states.
- “The level of knowledge of landmark IOM quality reports among CEOs and board chairs was remarkably low. . . There were significant differences between the CEOs’ perception of the knowledge of board chairs and the board chairs’ self-perception”

## **PATIENT SAFETY AND QUALITY IMPROVEMENT ACT OF 2005(42 U.S.C. 299c-21)- Whistleblower protection**

- "A provider may not take an adverse employment action. . .against an individual. . . Based upon good faith reported information. . . To the provider. . . Or to a patient safety organization.
- "Adverse employment action" includes credentialing and certification
- Equitable relief authorized "for any aggrieved individual" to enjoin any violation or for reinstatement and back pay

## **.MEDICAL ERRORS AND CARE FAILURES AS CRIMINAL CASES**

- "Worthless Services" USA v. Wachter 2006 WL 2460790(E.D.Mo. 8/23/06)
- Indictment alleged that providers are prohibited from submitting claims that are "of a quality which fails to meet professionally recognized standards of health care" citing 42 U.S.C. 1320c-5(Obligations of health care . . . Providers)
- Court upheld indictment; guilty plea by defendants to federal health care offenses.

## 1. NEW FOCUS ON MEDICAID

- Deficit Reduction Act requirements
- [www.cms.hhs.gov/DeficitReductionAct/Downloads/CMIP%20InitialPlan%20July%202006.pdf](http://www.cms.hhs.gov/DeficitReductionAct/Downloads/CMIP%20InitialPlan%20July%202006.pdf) –Medicaid Integrity Program
- New York F-SHRP Agreement-\$1.5 billion recoveries over 5 years
- Payment Error Recovery Contractors

## NEW FOCUS ON MEDICAID

- New State Inspectors General

## **FUTURE OF HEALTH FRAUD PROSECUTIONS**

- **QUALITY/SAFETY/DIGNITY ISSUES**
- **FINANCIAL LOSS TO GOVERNMENT  
AND BENEFICIARIES**
- **WHISTLEBLOWER INFORMATION  
AND REFERRALS**
- **PART D EXPOSURES FROM NEW  
PROGRAM**