



# Client Alert



Contact Attorneys Regarding  
This Matter:

Aaron M. Danzig  
404.873.8504 - direct  
[aaron.danzig@agg.com](mailto:aaron.danzig@agg.com)

J. Ryan Hood  
404.873.8580 - direct  
[ryan.hood@agg.com](mailto:ryan.hood@agg.com)

Arnall Golden Gregory LLP  
Attorneys at Law

171 17th Street NW  
Suite 2100  
Atlanta, GA 30363-1031

1 Biscayne Tower  
Suite 2690  
2 South Biscayne Boulevard  
Miami, FL 33131

2001 Pennsylvania Avenue NW  
Suite 250  
Washington DC 20006

[www.agg.com](http://www.agg.com)

## Justice Department Releases Record-breaking Recovery Numbers for Fiscal Year 2011

Attorney General Eric Holder and Department of Health and Human Services (HHS) Secretary Kathleen Sebelius recently released the government's health-care fraud and prevention recovery numbers for fiscal year 2011. These efforts resulted in the recovery of \$4.1 billion dollars—the highest annual amount ever recovered by the government.<sup>1</sup>

Attorney General Holder attributed the record-breaking recovery numbers to the government's "commitment to combating health-care fraud in all its forms."<sup>2</sup> In 2011, the Justice Department's Criminal Division and the U.S. Attorney's Offices opened up more than 1,100 new healthcare fraud investigations, and had 1,800 such investigations pending. Additionally, the government charged more than 1,400 healthcare fraud defendants in nearly 500 cases, and secured more than 700 convictions. The Attorney General also remarked that the Justice Department's Civil Division and U.S. Attorney's Offices opened almost 1,000 new civil healthcare fraud investigations while having more than 1,000 such cases pending, and recovered approximately \$2.4 billion under the False Claims Act alone.

Since January 2009, the Justice Department has used the False Claims Act to recover more than \$6.6 billion in federal healthcare dollars—more than in any other three-year period.

The focus on healthcare fraud-related investigations and recoveries by the government shows no signs of losing steam in 2012. On February 28, 2012, the Department of Justice announced the arrest of a physician and the office manager of his medical practice, along with five owners of home health agencies (HHAs), on charges related to their alleged participation in a nearly \$375 million healthcare fraud scheme involving fraudulent claims for home health services.<sup>3</sup>

According to the indictment, Dr. Jacques Roy owned and operated an association of healthcare providers that primarily provided home health certifications and performed patient home visits in the Dallas, Texas, area. The government alleges that Dr. Roy certified or directed the certification of more than 11,000

- <sup>1</sup> The Department of Health and Human Services and the Department of Justice Health Care Fraud and Abuse Control Program Annual report for Fiscal Year 2011.
- <sup>2</sup> Press Release of remarks made by Attorney General Holder during the Health Care Fraud and Abuse Control Program Report press conference, February 14, 2012.
- <sup>3</sup> Department of Justice press release: "Dallas Doctor Arrested for Alleged Role in Nearly \$375 Million Health Care Fraud Scheme," February 28, 2012.

individual patients from more than 500 HHAs for home health services during the past five years—more than any other medical practice in the United States. These certifications purportedly resulted in more than \$350 million being fraudulently billed to Medicare and more than \$24 million being fraudulently billed to Medicaid.

The government targeted Dr. Roy using sophisticated data analysis and discovered, among other things, that in 2010, while 99 percent of physicians who certified patients for home health signed off on 104 or fewer people, Dr. Roy certified more than 5,000 in that same time period.

Given the government's increasing focus on enforcement actions to prevent and deter fraud, the implementation of an effective compliance program is more important than ever.

Having a strong compliance culture lessens the chance that an employee will commit a violation of the law that may have adverse results for the healthcare provider, and also increases the chance that, if a violation does occur, it will be discovered and addressed in a timely manner and before it becomes a more serious problem. Investing in a strong compliance program on the front end can help the company avoid the devastating financial and reputational costs of a federal investigation and, potentially, a prosecution or civil enforcement action.

While a compliance program is not a guarantee that a government investigation will not occur, if a potential criminal problem arises, the existence of a robust and vibrant compliance program is a significant factor that the government considers when deciding whether to prosecute a company. If a company is prosecuted, the existence of an adequate compliance program may limit the potential penalty.

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