



Department of Justice Pilot Program Will Focus on Opioid Fraud and Abuse

Deborah L. Livornese and Genevieve M. Razick

On August 2, 2017, Attorney General Jeff Sessions announced the formation of the Opioid Fraud and Abuse Detection Unit and a new Department of Justice (DOJ) data analytics program to combat opioid-related fraud and abuse. The announcement follows DOJ's recent significant enforcement activity in July 2017 to identify and prosecute more than 412 individuals involved in opioid-related health care fraud involving \$1.3 billion in fraud-related schemes.¹

There has also been recent state activity to review and revise state laws relating to opioid prescribing, as more than 52,000 Americans were reported to have lost their lives to drug overdoses in 2015. According to DOJ, this epidemic is primarily due to opioids, including prescription drugs, heroin, fentanyl and other synthetic drugs.²

The Program

The program will use data to target and prosecute individuals thought to be involved or contributing to the opioid epidemic. Attorney General Jeff Sessions remarked that he expects the program to provide important information about prescription opioids, including which physicians have a higher incidence of writing opioid prescriptions; the rate of patient death within 60 days of receiving a prescription for an opioid; the average age of patients receiving prescriptions for opioids; regional areas where opioid issues are prevalent; and pharmacies that dispense disproportionately large quantities of opioids compared to other pharmacies.³

The program will also fund 12 Assistant United States Attorneys positions for a period of three years to work in specific regions that have been identified as particularly hard hit by the opioid epidemic. The Assistant United States Attorneys will work with state and federal partners including the FBI, DEA and HHS to investigate doctors, pharmacies, and medical providers and prosecute those furthering the opioid-related fraud epidemic.⁴ The Assistant United States Attorneys will focus on pharmacy companies that divert or dispense prescription opioids for illegitimate purposes, pill mill schemes, and other health care fraud schemes related to prescription opioids.⁵

The 12 districts are located in regions in the following states: Florida, Michigan, Alabama, Tennessee, Nevada, Kentucky, Maryland, Pennsylvania, Ohio, California, North Carolina, and West Virginia. Attorney General Jeff Sessions noted that these are areas in which opioid-related health care fraud enforcement will make a difference in curbing the epidemic.⁶

AGG Observations

- Based on recent enforcement actions and the spotlight on the opioid-related prescription

¹ Department of Justice, Middle District of Florida, National Health Care Fraud Takedown Results In Charges Against Over 412 Individuals Responsible For Over \$1.3 Billion In Fraud Losses, (July 13, 2017), available at <https://www.justice.gov/usao-mdfl/pr/national-health-care-fraud-takedown-results-charges-against-over-412-individuals>.

² Department of Justice, Attorney General Sessions Announces Opioid Fraud and Abuse Detection Unit, (Aug. 2, 2017), available at <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-opioid-fraud-and-abuse-detection-unit>.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

epidemic, DOJ's announcement is not surprising. FDA's new Commissioner Gottlieb has also made clear that one of his priorities is the opioid crisis. Increased enforcement action and attention on opioids is likely to continue.

- The government is increasingly relying on data analytics as the basis for prosecution, particularly in the healthcare area which because of the extensive documentation and record-keeping requirements lends itself to this approach.
- Prosecution for opioid-related health care fraud and abuse can result in criminal penalties, including imprisonment. Pharmacies, pharmaceutical companies, prescribers, and health care providers should be aware of recent enforcement actions and acquaint themselves with state and federal requirements to ensure prescribing, dispensing, marketing, and other activities will stand-up to heightened scrutiny. Heightened scrutiny can be expected everywhere, but especially in the identified regions.

Authors and Contributors

Deborah L. Livornese
Of Counsel, DC Office
202.677.4922
deborah.livornese@agg.com

Genevieve M. Razick
Associate, Atlanta Office
404.873.8196
genevieve.razick@agg.com

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Atlanta Office
171 17th Street, NW
Suite 2100
Atlanta, GA 30363

Washington, DC Office
1775 Pennsylvania Avenue, NW
Suite 1000
Washington, DC 20006

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