TRENDS IN HEALTH CARE FRAUD

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Any opinions expressed in this presentation are those of the presenter and do not necessarily reflect the views of the United States Department of Justice.

Mission – Southern District of Texas
To investigate and prosecute those cases having a significant federal interest.

Law Enforcement Priorities

- Anti-terrorism
- Organized Criminal Activity
  - Drug Trafficking
  - Human Trafficking
  - Narcotics
- White Collar Crime
  - Public Corruption
  - Complex Fraud (Health Care, Public/Private Sector)
- Violent Crime (Operation Safe Neighborhood)
Geographic Area
Southern District of Texas

Southern District of Texas

- Population – 6.9 Million
- 43 counties
- 14,108 square miles
- 300 mile common border with Mexico
- 436 mile Gulf Coast
- Office Personnel:
  - 170 AUSAs
  - 119 Support Staff
  - 28 Students
  - 22 contractors

Victoria

- Population – 62,000
- Office personnel strength (unmanned)
  - Unmanned office
  - 1 contractor
- Intermediate point between Houston and the border
  - Lies at the intersection of US 59 and US 77 – two major transportation arteres for drug and illegal alien traffic
Corpus Christi

- Population – 532,460
- Falfurrias checkpoint
  - Highest number of illegal drug seizures
- Vast rural ranch lands
  - King Ranch
  - Kennedy Ranch
- Office personnel strength
  - 19 AUSAs
  - 12 support
  - 3 students
  - 1 contractor

Brownsville

- Population – 355,309
- Major alien and drug smuggling gateway
- Office personnel strength
  - 16 AUSAs
  - 11 support
  - 2 students

McAllen

- Population – 623,060
- Major narcotics trafficking hub
- Massive area for Health Care Fraud
- Office personnel strength
  - 21 AUSAs
  - 14 support
  - 3 students
  - 3 contractors
Laredo

- Population – 217,297
  - Nuevo Laredo population – 460,000
- Numerous international ports of entry
  - 6,000 commercial vehicles a day
  - More trade than west Texas, New Mexico, Arizona and southern California combined
- Office personnel strength
  - 19 AUSAs
  - 14 support
  - 3 students
  - 2 contractors

WHEN DO WE CHARGE?

- “SIGNIFICANT FEDERAL INTEREST”
  - WILL THE CHARGE RESULT IN SIGNIFICANT TIME?
  - DO WE HAVE THE RESOURCES?
- MAINLY LONG-TERM PROACTIVE CASES
  - PLENTY OF REACTIVE WORK- (PSN, HCF)
  - NO REACTIVE DRUG SECTION
MEDICARE FRAUD STRIKE
FORCES:
UNITED STATES ATTORNEYS OFFICES
U.S. DEPT. OF JUSTICE, CRIMINAL DIVISION
FBI
HHS, OIG
MFCU
LOCAL AND STATE LAW ENFORCEMENT

Baton Rouge    New York    Tampa
Chicago         Dallas      Houston
Detroit         Los Angeles Miami

WHAT WE TRADITIONALLY SEE

• LARGE SCALE CONSPIRACIES
• KICKBACKS
• UNECESSARY/NOT RENDERED SERVICES
• UPCODING
• UNBUNDLING
• MEDICAL IDENTITY THEFT
NUMBERS ARE ASTONISHING

• ANNUALLY TOP 5 DISTRICTS FOR HCF
  – 2013-2014 OVER $2 BILLION PAID TO WORST DOCTORS
  – $930 MILLION IN HARRIS COUNTY ALONE
  – $420 MILLION IN MCALENN
• WORK WITH CIVIL AND ASSET FORFEITURE
  – QUI TAM
  – ACE—AFFIRMATIVE CIVIL ENFORCEMENT
  – HOUSES, CARS, CLINICS, BANK ACCOUNTS
  – FY 2015, over $120 Million in settlements

SAMPLE INVESTIGATIONS

• BILLING MEDICARE AND PRIVATE INSURANCE FOR Rx NEVER PROVIDED (NEVER RENDERED)
  – BENEFICIARIES UNAWARE (MEDICAL ID THEFT)
  – SOME BENEFICIARIES INVOLVED (KICKBACKS)
  • PHARMACY WAIVING COPAYS
  • ILLEGAL AND AFFECTS NEIGHBORING BUSINESSES
• PHARMACIST DIVERTING FOR PERSONAL USE
  – DIVERSION FOR SALE
  – DIVERSION FOR PERSONAL USE

CRIMINAL TRENDS

• HOME HEALTH FRAUD STILL PREVALENT
• HOSPICE FRAUD
• GENETIC TESTING
• DRUG TESTING/SCREENING
• COMPOUNDING PHARMACIES
• DRUG DIVERSION
HOME HEALTH

• YEARLY BATTLE
  — MASSIVE NUMBERS
  — CONSTANT STREAM OF DOCTORS WILLING TO ENGAGE
• WORKING WITH MEDICARE AND PRIVATE INSURERS
• WORKING PROACTIVELY TO COMBAT

HOSPICE FRAUD

• FRAUD CENTERS ON ELIGIBILITY AND UPCODING
  — THOSE WHO DO NOT QUALIFY
  — ONCE IN, BILL FOR CONTINUOUS CARE
• PAYING PHYSICIANS FOR REFERRALS
  — AKS VIOLATIONS

GENETIC TESTING

• FRAUDSTERS EMBEDDING THEMSELVES IN CLINICAL SETTINGS
• PRESENTED AS LEGITIMATE ENTITY
• FRAUD OCCURS IN MULTIPLE WAYS
  — DOCTORS GETTING KICKBACKS
  — TEST PATIENTS REGARDLESS OF NEED/DIAGNOSIS
• EX: COMPANY HAD OFFICE IN TEXAS AND OTHER STATE
  — $100 MM BILLED IN OTHER STATE
  — $60 MM BILLED IN HOUSTON
  — YET ALL DOCTORS HOUSED IN SOUTH TEXAS!
DRUG TESTING/SCREENING

• LARGE UPTICK IN THESE CASES
• MUST BE VIGILANT IN REVIEW OF BILLING
• UNNECESSARY TESTING
  — NEGATIVE FOR QUALITATIVE
  — THEN SENT FOR QUANTITATIVE ANALYSIS

COMPOUNDING

"COMPOUNDING PHARMACIES INVESTIGATED FOR POSSIBLE FRAUD TIED TO PAIN CREAMS"
Business sold the creams, including one marketed by former Green Bay Packers quarterback Brett Favre, that had little medicinal value, feds say.

COMPOUNDING

“FEDERAL PROSECUTORS IN FOUR STATES CLAIM THAT PHARMACEUTICAL COMPANIES SUCH AS RX REMEDIES DELIVERED MORE OF THE CREAM THAN HAD BEEN ORDERED, AUTOMATICALLY REFILLED PATIENTS’ PRESCRIPTIONS WITHOUT FIRST NOTIFYING THEM, AND OVERBILLED CLIENTS -- SOME, ACCORDING TO FORTUNE, CHARGING MORE THAN $10,000 FOR A SINGLE TUBE.”

HEALTHCARE FINANCE- Feb. 11, 2016
COMPOUNDING

- **US v Tamara Mitchell**
  - November 2016 trial before Hon. Nancy Atlas
  - $17 MM fraud
  - Guilty and large forfeiture pending
- On a bit of a decline due to program changes
- Still an issue for Medicare Part D

DIVERSION PROSECUTIONS

- Prescription drugs diverted from legitimate uses and ultimately sold on the street and consumed by addicts
- Generally handled as a narcotics prosecutions with DEA and FBI
- Many involved healthcare fraud where cost of drugs is being reimbursed
- Persistent issue in healthcare fraud

SAMPLE INVESTIGATIONS

- Clinic owner searches for doctor
- Doctor signs off on unnecessary Rx
  - Mostly oxycodone
  - Highly addictive / large markup on street
- Recruiter drives vans full of “patients”
  - Visit/copay/Rx fees all paid for
  - Get a kickback then deliver Rx to recruiter
  - Drugs sold on streets
Dr. X VS. #1 RANKED PHARMACY IN TX (2015)

Oxycodone Products (DUs)

DIVERSION IS AN EPIDEMIC

• PRESCRIPTION DRUG INITIATIVE
  — FBI AND DEA RUN
  — UP TO 80% OF “PILL MILL” CASES HAVE HCF NEXUS
• CONTINUE PROACTIVE INVESTIGATIONS
• ALSO LOOK AT DATA FOR OUTLIER PHYSICIANS
• TARGET PHARMACIES AS WELL

LAW ENFORCEMENT IS HERE TO HELP

• LOCAL FBI OFFICE RANKED “HIGH PERFORMING”
• TIPS COULD RESULT IN A CASE
• SEEKING MORE PRIVATE INSURANCE CASES
  — WORK WITH NATIONAL HEALTH CARE ANTI-FRAUD ASSOCIATION
  — HEALTH CARE FRAUD PREVENTION PARTNERSHIP
CIVIL DIVISION

- ACE GROUP
  - “AFFIRMATIVE CIVIL ENFORCEMENT”
  - 5 ATTORNEYS; 1 INVESTIGATOR; 1 PARALEGAL
- REVIEW ALL QUI TAM FILINGS IN DISTRICT
- REVIEW DATA FOR OUTLIER BILLING
- PARALLEL PROCEEDINGS WITH CRIMINAL

CIVIL TRENDS

- VERY SIMILAR TO CRIMINAL
  - HOSPICE
  - HOME HEALTH
  - COMPOUNDING PHARMACIES
- ALSO SEEN INCREASE IN “SHORT STAY” CASES
  - ADMITTED IN-PATIENT; SHOULD BE OUT-PATIENT
  - CMS “TWO MIDNIGHTS” RULE

CIVIL TRENDS

- QUI TAMS
  - MORE RELATORS GOING FORWARD ON OWN
    - JUST NEED TO GET PAST MOTION FOR SUMMARY JUDGMENT OR MOTION TO DISMISS
    - DEFENDANTS THEN IN POSITION TO SETTLE
    - TREBLE DAMAGES AND MANDATORY MINIMUMS
  - EACH FALSE CLAIM NETS RELATOR MONEY
    - MANDATORY MINIMUM OF $5,500, UP TO $11,000
    - PENDING INCREASE IN THOSE FIGURES
ACOs

- INTERPLAY BETWEEN STARK/AKS AND ACA ENCOURAGEMENT OF ACO
  - VERTICAL PATIENT INTEGRATION
  - STARK= VOLUME AND VALUE
  - ACO= COST SAVINGS AND QUALITY OF CARE METRICS
- MUST DOCUMENT EVERYTHING
  - EVEN BOARD MINUTES
  - INVESTIGATORS WILL LOOK TO DOCUMENTATION

CIVIL ENFORCEMENT

- CONTINUE TO INTERVENE IN QUI TAM FILINGS
  - CAN RESULT IN CRIMINAL REFERRAL
  - ACTIVE DOCKET THROUGHOUT SDTX
- ACE GROUP USES DATA ANALYTICS TO FIND BILLING OUTSIDE THE NORM
  - ENFORCEMENT IS PROACTIVE
  - DON’T HAVE JUDICIAL TIMELINE OF QUI TAM
  - DON’T HAVE TO PAY RELATOR SHARE

FEEDBACK IS GOOD??
QUESTIONS?