

MANAGED CARE/ENFORCEMENT & COMPLIANCE:
 Medicare Risk Adjustment (MRA) & Service Area Expansion (SAE) False Claims Act (FCA) *qui tam* Liability
United States ex rel Sewell v. Freedom Health, et al. (2017)

Orlando Regional Compliance Conference
 Health Care Compliance Association (HCCA)
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U.S. Dept. of Justice (DOJ) Press Release: *Freedom Health*

Department of Justice
 Office of Public Affairs

FOR IMMEDIATE RELEASE Tuesday, May 30, 2017

Medicare Advantage Organization and Former Chief Operating Officer to Pay \$32.5 Million to Settle False Claims Act Allegations

Freedom Health Inc., a Tampa, Florida-based provider of managed care services, and its related corporate entities (collectively "Freedom Health"), agreed to pay \$31,695,593 to resolve allegations that they violated the False Claims Act by engaging in illegal schemes to maximize their payment from the government in connection with their Medicare Advantage plans, the Justice Department announced today. In addition, the former Chief Operating Officer (COO) of Freedom Health Siddhartha Pagidipati, has agreed to pay \$750,000 to resolve his alleged role in one of these schemes.

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Freedom Health FCA *qui tam* Settlement

- » 2017 settlement agreements between *Freedom Health*, former CEO, the United States, State of Florida, & Relator's Estate
- » Former Medical Director filed FCA *qui tam* complaint in 2009
- » Medicare Risk Adjustment (MRA) & Service Area Expansion (SAE) issues
- » Medicare Risk Adjustment (MRA) allegations:
 - Freedom Health used impermissible ICD-9 codes,
 - To calculate & submit inflated risk adjustment scores, and
 - Receive Medicare overpayments

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Freedom Health FCA qui tam Settlement Cont.

- » Service Area Expansion (SAE) allegations:
 - 2008 application for SAE (2009 DOS) into 9 counties
 - Freedom Health represented it would use a delegated provider network that it never intended to use, and
 - It would develop its own directly contracted network, but
 - Without either its provider network was inadequate
- » No admission of liability or wrongdoing
- » United States = \$31,695,593 (former CEO = \$750,000)
 - MRA = \$4,169,199 + \$16,678,474 credit (for voluntary MRA reconciliation)
 - SAE = \$11.6 million
- » State of Florida = \$78,414

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Freedom Health FCA qui tam Settlement Cont.

- » **OIG Corporate Integrity Agreement (CIA)** for 5 years:
 - Appoint & maintain a **Compliance Officer** that is:
 - Member of senior management,
 - Reports directly to CEO,
 - Is not a subordinate of GC or CFO,
 - Does not act in any capacity as legal counsel,
 - Chair the Compliance Committee, and
 - Be responsible for developing, implementing & monitoring the Compliance Program

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Freedom Health FCA qui tam Settlement Cont.

- » **OIG Corporate Integrity Agreement (CIA) Cont.:**
 - Establish a **Compliance Committee** that meets quarterly for the purpose of supporting the CO in its responsibilities
 - **Board Oversight** of compliance program including:
 - Quarterly review & reporting to OIG of its work
 - For each reporting period:
 - Engaging Compliance Expert to conduct a Compliance Program Review for each reporting period, and
 - Adopting a resolution signed by each Board member resolving that it has conducted a reasonable inquiry & that the company has implemented an effective compliance program
 - If unable to adopt the resolution, the Board must provide OIG written explanation of reasons why it is unable to do so

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Freedom Health FCA qui tam Settlement Cont.

» **OIG Corporate Integrity Agreement (CIA) Cont.:**

- **Management Oversight & Certifications** of areas of authority:
 - Annual certifications their department is in compliance with applicable Federal health care program requirements & CIA obligations,
 - If unable, manager must provide written explanation to OIG as to why he or she is unable to do so
- Develop & implement **Written Policies & Procedures**
- Greater **Training & Education** of board members & "covered persons"
- Develop & implement a centralized **Risk Assessment & Internal Review Process** to identify & mitigate program risks

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Freedom Health FCA qui tam Settlement Cont.

» **OIG Corporate Integrity Agreement (CIA) Cont.:**

- Engagement of **Independent Review Organization (IRO):**
 - Must satisfy & certify its independence & objectivity in any report
 - Verify accuracy of SAE of *Facility Network Review* in the event of a service area expansion application
 - Conduct a *Risk Adjustment Review* & prepare a *Risk Adjustment Report* involving:
 - Review of ICD-9 filtering logic, and
 - Random chart review of sample of 100 risk adjusted members
- Establish a **Disclosure Program** that includes a mechanism (e.g., a toll-free compliance hot line)
 - Must emphasize nonretribution, non-retaliation policy & shall include anonymous communication mechanism for which appropriate confidentiality shall be maintained

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Freedom Health FCA qui tam Settlement Cont.

» **OIG Corporate Integrity Agreement (CIA) Cont.:**

- Screen **Ineligible Persons** from prospective & current "covered persons"
- Provide OIG within 30 days **Notification of Government Investigation or Legal Proceeding** involving fraudulent activities
- Develop & implement written **Overpayment(s)** policies & procedures re: the identification, quantification & notifications and/or repayments to CMS of overpayments
- Reporting of **Reportable Events** to OIG within 30 days including:
 - "Substantial overpayments,"

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Freedom Health FCA qui tam Settlement Cont.

» **OIG Corporate Integrity Agreement (CIA) Cont.:**

- Reporting of **Reportable Events cont.:**
 - Probable violations of criminal, civil or administrative laws applicable to any Federal healthcare program (reasonable person standard),
 - Employment or contracting with an ineligible "covered person," or
 - Filing of a bankruptcy petition

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Meet Your Speaker



Latour "LT" Lafferty
Partner,
White collar defense &
FCA qui tam litigation
Holland & Knight, LLP

- » Certified Healthcare Compliance (CHC) by HCCA
- » Certified Compliance & Ethics Professional (CCEP) by SCCE
- » *Best Lawyers in America Guide*, Tampa Corporate Compliance Lawyer of the Year (2016)
- » Former federal prosecutor/Assistant U.S. Attorney (10 years); 6 years criminal & 4 years civil fraud enforcement including FCA qui tam investigations & litigation
- » Special Prosecutor in Office of Independent Counsel (OIC) (Whitewater/Monica Lewinsky)
- » Ethics Advisor, Office of Counsel to President George W. Bush
- » Commissioner, Florida Commission on Ethics (FCE) (2006-2008)
- » Vice-President/General Counsel, Gulf Ridge Council, Boy Scouts of America (BSA) (2010-2016)
- » Graduate Certificate in Healthcare Corporate Compliance (George Washington University)
- » Graduate Certificate in Health Management & Leadership (University of South Florida)

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