



## Insights

# Health Care Regulatory and Legislative Update

**Chapman Insights**  
**November 22, 2016**

### Weekly Health Care Criminal and Civil Fraud Enforcement Round-Up

The following highlights notable health care fraud and abuse news, settlements and enforcement actions from the previous week. In a busy week, the United States Department of Health and Human Services Office of the Inspector General (“*OIG*”) posted eight criminal and civil enforcement actions to its archive since our November 14, 2016 newsletter.

- 1. Radiology Company, Zwanger-Pesiri, Inc., Pleads Guilty to Federal Health Care Fraud Charges; Agrees to pay \$2.4 Million in Criminal Forfeitures and \$8 Million to Resolve Civil Liability.** On November 16 2016, the United States Department of Justice (“*DOJ*”) announced that Zwanger-Pesiri Inc., a Long Island radiology company, pleaded guilty to fraudulently performing and billing for procedures that had not been ordered by treating physicians. The unordered tests were performed as part of a “bundle” — when a patient’s physician ordered one test, Zwanger-Pesiri would automatically perform and bill for the related, but unordered test. The company agreed to forfeit \$2.4 million in this criminal case. In addition, the DOJ announced an \$8 million civil settlement to resolve allegations that Zwanger-Pesiri fraudulently billed Medicare and Medicaid programs for procedures performed or supervised by physicians who were not properly credentialed with Medicare and Medicaid programs, or which were performed at an unauthorized practice location.

#### Related People

Jennifer Russano Koltse

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- 2. Two Pharmacies, Lemon Bay Drugs North and Brooksville Drugs, Agree to Pay \$750,000 to Resolve False Claims Act Allegations.** On November 15, 2016, the DOJ announced that Lemon Bay Drugs North, Inc. and Brooksville Drugs, Inc. agreed to pay \$750,000 to resolve allegations that the pharmacies violated the False Claims Act by causing claims to be submitted to federal health care programs for prescription drugs that were never dispensed. The government specifically alleged that the pharmacies provided Medicare and Medicaid patients generic versions of certain medications, but charged Medicare and Medicaid for the more expensive brand name medications. The allegations against the pharmacies were originally brought by a former pharmacy technician employee under the whistleblower provisions of the False Claims Act. The whistleblower will receive \$142,500 as her share of the recovery.
- 3. Cardiac Monitoring Company, MedNet Inc., Agrees to Pay Over \$1.35 Million to Resolve Illegal Kickback Allegations.** On November 15, 2016, the DOJ announced that MedNet Inc., a remote cardiac monitoring company, agreed to pay more than \$1.35 million to resolve allegations that the company paid kickbacks to induce physicians to use its cardiac monitoring services. The government specifically alleged that MedNet's client agreements, which charged clients for services but then allowed those customers to bill Medicare directly for the same services, resulted in an impermissible net profit to MedNet's customers in violation of the Anti-Kickback Statute. The allegations were raised by a whistleblower, but the DOJ press release did not provide information regarding the whistleblower's share of the recovery.

## [House Republicans Urge Federal Agencies to Cease Rulemaking until President-Elect Trump Takes Office; Warn that Congressional Review Act Will Be Used to Overturn New Rules](#)

In an effort to block lame-duck rulemaking, House Republican Leaders sent letters to all government agencies requesting that the agencies stop issuing rules and regulations until President-Elect Trump takes office. The November 15, 2016 letter, which can be seen [here](#), warns that “should you ignore this counsel, please be aware that we will work with our colleagues to ensure that Congress scrutinizes your actions, and if appropriate, overturns them — pursuant to the Congressional Review Act.” The Congressional Review Act (“CRA”) is a little-used oversight tool that Congress may use to overturn a rule issued by a federal agency. On November 17, 2016, the Congressional Research Service released a memorandum explaining the rule in detail, and listing major rules issued under the Obama Administration that are potentially subject to consideration under the CRA. The list includes regulations submitted to Congress after May 30, 2016, many of which affect the Medicare Program. Since its passage in 1996, the CRA has only been used once, as Presidential veto typically left the CRA without teeth. However, as the Congressional Research Service memo points out, the CRA is more likely to be used successfully in a situation where an incoming President shares a party affiliation with a majority in both houses of Congress. For more information, the Congressional Research Service memo can be found [here](#).

## OIG Releases Its Fiscal Year 2017 Work Plan

The OIG recently released its 2017 Work Plan, which serves to identify new and ongoing investigative, enforcement and compliance priorities for the OIG in the upcoming year. The work plan, which is published annually by the OIG, is an invaluable resource for legal and compliance teams to use when identifying internal audit and review topics for the upcoming year. We plan to publish a more detailed analysis of the 84-page work plan in the coming week.