

Introduction to the 2025-2026 Edition

This edition of this book is our twenty-second annual edition since we took over authorship. Fraud and abuse in Medicare and Medicaid remain a dynamic area. Set forth here are the additions for this year.

In Chapter 1 all the statistics are updated. We note the change in work plan publication frequency; identify a new fraud alert; address the OIG focus on Medicare Advantage plans' risk adjustments; provide a new enrollment risk resource; describe the first industry specific compliance guidance for nursing facilities; and take into account the DOJ Criminal Division focusing on health care among its priorities

Chapter 2 includes new caselaw regarding the link between kickbacks and false claims and that the false claims must result from the kickbacks, as well as a Court of Appeals case analyzing the application of the statute only to those who can influence the delivery of care and its non-application to others, like non-physician marketers, contrary to long-standing analyses of the law's effects. We confront a new special fraud alert regarding Medicare Advantage plans and offer updated information regarding 13 OIG advisory opinions

For the Stark statute, which is the focus of Chapter 3, it was a quiet year. We present updated self-referral disclosure protocol (SRDP) statistics as well as the first Stark Advisory Opinion since 2021.

In Chapter 4 we removed obsolete OIG work plan information in favor of providing information regarding the work plan archives and on-going updates.

As is typical and appropriate, Chapter 5 addressing False Claims is the densest with the most activity. We have added two new cases on what can qualify as a false claim and two new reverse false claims cases. There are many ways in which cases can fail to qualify as false claims act cases. We address a wide range of them including three Circuit Court cases on scienter, a Circuit Court case on falsity, and three district court opinions regarding how claims may be false. With respect to materiality and implied certification, we describe two different Circuit Court opinions and a number of district court cases struggling with the purportedly bright lines post *Escobar*. Twelve district court cases deal with particularity following their Circuit Court splits. We highlight a Circuit Court case overturning longstanding precedent regarding first to file, plus two district court cases in other districts, along

with another five differing Circuit Court cases on the public disclosure bar. There is a Court of Appeals case dealing with whether the relator is an ‘original source’. We provide the source for statistics regarding when the government intervenes, when it declines and the resulting outcomes, as well as a Supreme Court case on what happens when the government intervenes and takes control of the case, plus a court of appeals case and two district court cases. We confront a Circuit Court case and district court cases addressing the relator’s share, if any. We offer three differing Circuit Courts addressing the nuances of retaliation and a district court case addressing what actions qualify as retaliation against the relator who brings the case. In that vein we provide a Circuit Court case and a district court case addressing what actions by the employer are materially adverse to the relator for purposes of a retaliation claim. We include a shocking district court case finding the qui tam provisions of the False claims Act unconstitutional! The Chapter concludes its new material with three cases on the statute of limitations.

Closing the book is Chapter 6 on investigations by our colleagues Kevin Raphael and Jana Volante Walshak at Fox Rothschild which includes updated administrative initiatives, several Supreme Court cases which can affect investigations, subpoenas, civil investigative demands, search warrants and the other techniques of investigation which the government uses in the health care fraud context.

Helping clients to avoid fraud and abuse in its many forms, is a primary task of many health lawyers. This book is structured around the statutory predicates for problems, and is intended to elucidate both regulations and caselaw on point. We turn to the book ourselves during the year. We hope our readers find our work useful.

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