

## Recent DOJ Enforcement Actions Demonstrate that the Focus on Mental Health Services Fraud Continues

Article By:

Amanda Enyeart

Laura B. Morgan

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Two recent actions announced by the U.S. Department of Justice (DOJ), one civil and one criminal, along with a recent [speech](#) by Assistant Attorney General Leslie R. Caldwell, illustrate the current climate of government enforcement related to mental health services (i.e., ***intensive outpatient psychotherapy (IOP)*** and ***partial hospitalization program (PHP)*** services). In her speech, Caldwell specifically mentioned mental health as one of the areas the DOJ has targeted through its increasing use of data analytics to identify suspicious billing patterns.

On May 7, 2015, the DOJ [announced](#) that 16 hospitals agreed to pay a combined \$15.69 million to resolve a qui tam lawsuit filed under the False Claims Act (FCA), with the relator receiving approximately \$2.67 million. According to the DOJ, Health Management Associates (HMA) and 14 hospitals formerly owned and operated by HMA, Community Health Systems and its subsidiary Wesley Medical Center, and North Texas Medical Center allegedly knowingly submitted claims for IOP, typically provided on the hospitals' behalf by contractor Allegiance Health Management (Allegiance), that did not qualify for Medicare reimbursement for a variety of reasons. The claims settled by these agreements are allegations only, and there has been no determination of liability.

IOP is a collection of ambulatory psychiatric services, which, according to the DOJ's announcement, provide active treatment to individuals with mental disorders using a variety of treatment methods. The present case included allegations that the hospitals submitted claims that did not qualify for Medicare reimbursement because: the patient's condition did not qualify for the treatment; the treatments were not provided pursuant to an individualized treatment plan as required; the patient's progress was not adequately tracked or documented; the patient received an inappropriate level of treatment; and/or the therapy provided was primarily recreational or diversional in nature, and not therapeutic. The DOJ noted that in October 2013, it resolved similar allegations for \$4.67 million with LifePoint Hospitals, Inc. and two of its subsidiaries, which, according to the settlement agreement, also contracted with Allegiance to provide IOP services to their patients.

On May 6, 2015, one day before the announcement described above, the DOJ [announced](#) the indictment of Walid H. Hamoudi, a Houston physician, and Geraldine J. Caroline, the owner of a group home, for their alleged participation in a scheme related to the submission of \$5.2 million in

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false claims to Medicare and \$380,000 in false claims to Medicaid for PHP services. Hamoudi and Caroline were both charged with conspiracy to commit health care fraud, conspiracy to pay and receive kickbacks, and multiple counts of paying and receiving kickbacks in relation to the scheme, in which Hamoudi allegedly paid Caroline to send her group home residents to Riverside General Hospital to receive PHP services that were either not provided or for which the patients did not qualify. Hamoudi was also charged with money laundering under the scheme.

According to the [Medicare Benefit Policy Manual](#), PHPs are structured to provide intensive psychiatric care through active treatment, which closely resembles that of a highly structured, short-term hospital inpatient program. PHP is treatment at a level more intense than outpatient day treatment. Programs providing primarily social, recreational or diversionary activities are not considered partial hospitalization.

These indictments are the most recent in a long list of criminal actions related to this PHP services scheme. Between February 2012 and October, 2014, six individuals, including Mohammad Kahn, an assistant administrator of Riverside General Hospital, pleaded guilty to charges related to the scheme, which reportedly involved a total of \$158 million in Medicare claims, and four individuals, including Riverside's president and his son, have been convicted. Khan is scheduled to be sentenced on May 21, 2015 and the other defendants are also awaiting sentencing. PHP services have been under scrutiny by the federal government for the past several years. In 2011, based on a qui tam complaint, the DOJ investigated and prosecuted American Therapeutic Corporation for a \$205 million Medicare fraud scheme involving PHP services, which resulted in the conviction of more than 20 individuals, guilty pleas from the corporation and an associated management company, and a 50-year prison sentence for the mastermind of the scheme, according to a DOJ [announcement](#) and the recent Assistant Attorney General speech. Further, in August 2012, the Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) published a study entitled [Questionable Billing by Community Mental Health Centers](#), in which it reiterated concerns published in earlier reports regarding vulnerabilities in Medicare payments to community mental health centers for PHP services.

In another case, the DOJ [announced](#) in October 2014 that it sentenced an owner and operator of two community mental health centers in Houston and a patient recruiter for a community health center in Louisiana to prison and ordered them to pay restitution for their role in a Medicare fraud scheme for PHP services totaling \$258.5 million. Finally, the DOJ [announced](#) in January 2015 the sentencing of two Houston-area physicians and the owner of a group home to 148 and 120 months in prison, respectively, and ordered them to pay combined restitution of nearly \$10 million for their roles in a \$97 million Medicare fraud scheme involving claims for PHP services provided to patients who did not qualify or need the services and the payment of kickbacks to group home owners and recruiters for patient referrals.

These recent enforcement actions, together with the Assistant Attorney General's focus on these civil and criminal actions in her recent speech, serve to remind mental health providers of potential risks of criminal and civil liability associated with the provision of mental health services, particularly IOP and PHP services, and the need to ensure that all such services billed to Medicare are medically reasonable and necessary and unrelated to improper financial inducements.

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