

Yates Memo's Influence Felt in DOJ Health Care Enforcement

IN SHORT

The Situation: Almost two years after Sally Yates, then Deputy Attorney General, issued a memorandum regarding individual accountability for corporate wrongdoing, the effects of the so-called Yates Memo are being felt as strongly as ever.

The Result: A slew of recent settlements, sentencing, and exclusions suggests we may only now be seeing the full effects of that memorandum.

Looking Ahead: These cases provide insight into what is likely to be a continuing trend of holding individuals accountable for alleged health care fraud.

In September 2015, Deputy Attorney General Sally Yates issued a [memorandum](#) titled "Individual Accountability for Corporate Wrongdoing." In it, she stressed that one of the most effective ways to combat corporate misconduct is to hold individuals accountable, detailing six steps that should be part of all future investigations and prosecutions of corporate misconduct. The first of these is that to be eligible for any cooperation credit, corporations are required to provide to the Department of Justice ("DOJ") all relevant facts about the individuals involved in the alleged misconduct.



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Recent Cases

Recent health care cases illustrate that enforcement activity is spanning both civil and criminal fraud; involving lower-level employees in addition to executives, owners, and physicians; and is resulting in a broad array of penalties including fines, restitution, exclusion, termination of licensure, and imprisonment.

On July 17, 2017, for example, the DOJ [announced a settlement](#) with three companies and two executives resolving allegations that false claims were submitted for unnecessary rehabilitation services at 18 skilled nursing facilities as well as for fraudulently provided hospice services. The entities and individuals together were required to pay approximately \$19.5 million, and Foundations Health Solutions, Inc. ("FHS"), one of the companies, entered into a five-year Corporate Integrity Agreement ("CIA"). FHS's president was required to enter into the CIA as well, a step beyond what to date has been the more common practice of officers signing a CIA on behalf of their employer without being a named party to the CIA themselves.

In another [recent settlement](#), Freedom Health Inc. settled a False Claims Act lawsuit in which it was accused of submitting unsupported diagnosis codes that resulted in inflated reimbursements from Medicare. As part of the settlement, the company's former COO is required to pay \$750,000. Similarly, in [a settlement announced on July 6, 2017](#), former owners and managers of now-defunct Home Care Hospice in Philadelphia agreed to pay a combined \$825,000 and to transfer various assets including condos owned by two of the defendants.

In criminal fraud prosecutions, individuals are being sentenced to prison as well. In June 2017, a former nurse supervisor at Passages Hospice LLC was sentenced to 20 months in prison and ordered to pay \$1.67 million following her [conviction](#) at trial on three counts of health care fraud. Although Passages' former owner and administrator were sentenced to more prison time (six and a half years and 28 months, respectively), the judge believed the nurse supervisor's 20-month sentence was appropriate because she had allegedly "bullied" nursing assistants into billing for higher and more expensive levels of care than required.

Individuals are being excluded or required to give up their licenses as well. In a [settlement announced on May 30, 2017](#), a Minnesota nonprofit and two of its principals agreed to pay a combined \$4.52 million to resolve allegations that they violated the False Claims Act by hiring unlicensed health care providers and batch-signing thousands of claims. The two principals were barred from participating in federal and state health care programs for at least eight and five years, respectively. In June 2017, a nurse and co-owner of a home health company was [sentenced to three months in prison and ordered to pay \\$1.5 million in restitution](#) for his role in a scheme involving providing home care services to patients who were not homebound. As part of his sentence, he agreed to give up his nursing license.

None of these cases has individually garnered as much attention as the [DOJ's settlement with Tuomey Healthcare's former CEO](#) in September 2016, in which he was required to pay \$1 million, agree to a four-year period of exclusion, and release the company from any claims he might have for indemnification.

Looking Ahead

Speaking at a conference in April 2017, Attorney General Jeff Sessions reported that [health care fraud and corporate misconduct will continue to be prosecuted](#) as part of the DOJ's commitment to enforce all laws and that this will include holding individuals accountable. This mirrored [prior testimony](#) he gave during a Senate confirmation hearing when then-nominee Sessions said he would preserve the broad emphasis on charging individuals and that in some cases, individual prosecutions may in fact be more appropriate than penalties against businesses.

These statements, coupled with the Administration's [new budget](#)—which includes an additional \$70 million in Health Care Fraud and Abuse Control Program funding—suggest that the DOJ's enforcement activities will not be slowing. Indeed, on July 13, 2017, Attorney General Sessions and Department of Health and Human Services Secretary Tom Price announced charges against 412 individuals for their alleged participation in [health care fraud schemes](#) and the initiation of suspension actions against 295 providers in what is being called the largest-ever health care fraud enforcement action by the Medicare Fraud Strike Force.

TWO KEY TAKEAWAYS

1. Recent settlements, sentencing, and exclusions of individuals relating to fraud matters indicate that the Yates Memo's effects are being felt in the health care industry.
2. The current Administration is likely to continue to hold individuals accountable in a wide range of fraud cases in the health care industry in the years to come.

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