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May 11, 2017 – 8 a.m.-5 p.m.
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Brief Your CEO: Yates Is Gone But Her Memo Remains

Pursuing *False Claims Act* (FCA) and *Anti-Kickback Statute* (AKS) prosecutions is just one of the things the US Department of Justice does to crack down on corporate wrongdoing. But while the enterprise is centuries old, on Sept. 9, 2015 the DOJ initiated a major change in tactics when then Deputy Attorney General Sally Quillian Yates issued a memo calling on prosecutors to focus not just on the corporation but the individuals responsible for its transgressions. Given its liability ramifications, your executives are no doubt fully aware of the Yates Memo. But they may be unsure of what to make of it, especially now that a new Attorney General has been confirmed.

So a briefing from you shedding light on the topic is bound to be most welcome. While nobody knows for sure what's going to happen, here are a few things you can tell your executives about the Yates Memo and what its future may hold.

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The 6 Things Labs Need to Know About the Trump Travel Ban

We'll leave it to others to argue whether the Trump travel ban is legal, moral or wise. What we can tell you is that while it may be on temporary hold, the travel ban and the policy it embodies are challenges that labs are going to have to deal with sooner or later. Here are the six things you need to know about the travel ban and its practical impact on your lab.

1. What Is It?

The so called "travel ban" is an Executive Order (EO) issued on Jan. 27 to temporarily bar individuals from designated Muslim countries (restricted countries) from entering the US. The EO would actually impose three different entry bans:

Duration	Entrant Status	Entrant Nationality
120 days	Refugees	All nationalities
Indefinite	Refugees	Syria
90 days	Citizens, both immigrant and non-immigrant	Iran, Iraq, Libya, Somalia, Sudan, Syria, Yemen

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The 6 Things Labs Need to Know About the Trump Travel Ban, *from page 1*

2. Does It Affect Your Lab?

The ban affects you directly if, like many other labs, you have employees (or want to recruit employees), contractors or business associates who are citizens of the restricted countries.

3. What Is Its Practical Effect?

The term "travel ban" is a bit misleading. Technically, the EO doesn't prevent anybody from *leaving* the US; it simply bars them from getting back into the country later. Practical impact on your lab:

- It would deter individuals from restricted countries who are currently in the US, including your own employees, contractors and business associates, from leaving the country, e.g., traveling to an international conference or meeting;
- It would bar employees, contractors and business associates from restricted countries who are currently abroad from entering the US to do business with you.

The EO does not deport anybody; but there are concerns that subsequent orders may. [See the Box on page 3 for the EO's impact on visa holders.]

4. Does It Cover Green Card Holders?

One question that has caused confusion is whether the ban would still apply if the person from the restricted country is a legal permanent resident with a green card.

The short answer: Although having a green card will be a big help, it does not guarantee entry.

Explanation: On Jan. 29, the Department of Homeland Security issued a press release stating that in applying the EO, it will "deem the entry of lawful permanent residents to be in the national interest." But the next sentence opens a disturbing loophole. "Absent the receipt of significant derogatory information indicating a serious threat to public safety and welfare, lawful permanent residence status will be a dispositive factor in our *case-by-case determinations*" (emphasis added).

Translation: Although green card holders will get the benefit of the doubt, the DHS can still bar entry if it has evidence that the individual poses a serious threat.

5. Does It Cover Dual Citizens?

If the citizen of the restricted country is also a legal US citizen, the EO does not apply. However, dual citizens who hold passports of both a restricted and non-restricted country outside the US are covered even if the latter country is a US ally like the United Kingdom, Canada, Australia or Germany.

6. What Should You Do about It?

The key to insulating your lab from the harmful effects of the EO is to keep employees from restricted countries inside the US. But be careful about how you deal with the affected employees:

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Wrong Way: One approach is to *not let* employees from restricted countries travel abroad. While it may be well-intentioned, any policy that imposes an employment restriction on a group of employees based on their country of origin would likely be deemed a form of nationality discrimination banned by federal Equal Employment Opportunity laws. The fact that the policy is designed to protect employees against themselves is no defense. "In the area of civil rights, employees [should be left to] make their own personal risk decisions" without the employer's "paternalistic" interference, according to one court.

Right Way: Recognize that you can't prevent employees from travelling and respect their right to make their own personal decisions. But do everything in your power to encourage them to make the right decision. For example, consider cancelling all international trips involving affected lab personnel through the end of April when the EO is due to expire.

Takeaway: Issue Written Statement of Support. In addition, you might want to do what so many other leading companies across the US have done in response to the EO and issue a written statement to affected employees. Although there is no one-size-fits-all formula, your statement should:

- *Express your support for immigration and employees affected by the EO;*
- *Explain the EO and risks of travelling abroad while it remains in effect;*
- *Make it clear that you will neither require nor expect affected employees to engage in international business travel for as long as the EO is in effect; and*
- *Assure affected employees that they will suffer no adverse employment consequences for not travelling.*

Suspension of Visa Interview Waiver Program

One part of the Jan. 27 Executive Order that has flown under the radar is the suspension of the State Department's Visa Interview Waiver program, which allows frequent visitors to the US to renew their visas without an in-person interview.

The combination of restoring the interview requirement with expected government staff hiring freezes and cuts will make it harder to renew visas and may force visa holders to cut their stays short. Moreover, the visa issue affects visa holders from *all* countries, not just the seven Muslim countries covered by the travel ban.

What Labs Should Do: Labs can get out in front of the issue by warning employees with valid nonimmigrant visa status of the risk of significant delays in scheduling visa interviews and post-interview processing.

H-1B Visas

Many labs employ skilled temporary foreign workers under the H-1B visa program. Although the EO does not cover H-1B visas, the President has repeatedly criticized the program for allegedly crowding out American workers and plans to cap the number of visas granted are rumored to be in the works. Stay tuned...

What Next for the Travel Ban?

Critics have challenged the travel ban on constitutional grounds. On Feb. 3, a federal district court granted a temporary restraining order (TRO) banning enforcement of parts of the ban pending resolution of the underlying lawsuit.

The US Circuit Court of Appeals for the 9th Circuit upheld that ruling, leaving the administration with 4 options:

- **Option 1:** Give up—which is not likely to happen;
- **Option 2:** Appeal to US Supreme Court—a likely undesirable option as there are currently only eight Justices and persuading five of them will be difficult;
- **Option 3:** Fight it out in district court—this would involve significant time and risk;
- **Option 4:** Rewrite the EO—which is the option the administration chose.

As we went to press the 9th Circuit issued an order acknowledging that the President "intends to issue a new Executive Order and has urged the Court to 'hold its consideration of the case until the President issues the new Order.'" Therefore, further court action is on hold pending the new order. So stayed tuned as we await the new version of the EO and the Court's response on its enforceability.

INDUSTRY BUZZ

Arizona Fraud Suit Opens New Front in the Legal War against Theranos

Suing Theranos has become something of a cottage industry. And now a whole new front in the legal war appears ready to open: state consumer fraud lawsuits. The Arizona Attorney General's Office (AGO) fired the first shot by issuing a request for outside attorneys to sue Theranos and its subsidiaries for alleged violations of the Arizona Consumer Fraud Act. The case centers on the representations the privately-held blood testing firm made in the State of Arizona about its blood testing equipment and Wellness Centers.

> *"Our ultimate goal is to commercialize miniaturized, automated laboratories capable of small-volume sample testing, with an emphasis on vulnerable patient populations, including oncology, pediatrics, and intensive care."*
>
> —Theranos

Theranos Becomes a Legal Target

The Arizona state fraud case is the latest legal threat to the company previously heralded for its proprietary technology that was expected to revolutionize the diagnostic blood testing industry. In July 2016, the Center for Medicare and Medicaid Services imposed sanctions against Theranos and excluded its CEO, Elizabeth Holmes, from operating a blood testing lab for two years. Thereafter, the company shifted its focus to developing technology—namely the miniLab (a compact 2.5 cubic feet device containing a mini-robot processing single use cartridges). "Our ultimate goal is to commercialize miniaturized, automated laboratories capable of small-volume sample testing, with an emphasis on vulnerable patient populations, including oncology, pediatrics, and intensive care," the company explained in an Oct. 5 statement.

"[Theranos'] restructuring follows a period of significant change at the company that has included the building out of its executive team with substantial additional regulatory, compliance and operational expertise."

CMS's regulatory enforcement actions were just the beginning of Theranos's legal problems. The company also faced a series of civil lawsuits, including a class action fraud suit by investors and a breach of contract claim by Walgreens. (See "Walgreens Terminates Contract with Theranos," *LIR*, July 7, 2016.)

A New Legal Threat

Although Arizona is hardly Theranos's first plaintiff, the threatened Arizona consumer fraud case is different from the other cases in that it would be the first filed by a state government alleging violations of state law. And it could spawn more consumer fraud suits from other states where Theranos did business, including California where Theranos is based. (For more on the Theranos saga, see "Theranos Shifts Focus from Labs to Technology," *Diagnostic Testing & Emerging Technologies*, Oct. 26, 2016.)

The company, however, continues to put on a brave face with releases in January noting a reengineering of its operations and streamlining of staff with a "core team of 220 professionals" to pursue its business plan including commercialization of the miniLab. It explained this "restructuring follows a period of significant change at the company that has included the building out of its executive team with substantial additional regulatory, compliance and operational expertise." As late as Jan. 17, 2017, the company also announced formation of an eight-member Technology Advisory Board that will "work alongside Theranos' leadership and internal research and development teams in various areas, including advising the company on peer-reviewed publication submissions and on presentations at scientific meetings."

Takeaway: The legal battles facing Theranos continue to grow as the company streamlines and focuses on technology development.

ENFORCEMENT TRENDS

FISH Test Crackdown against 21st Century Oncology Nets Nearly $25 Million… and Counting

$24.86 million. That's how much a whistleblower has made for the government and herself—so far—in a case against 21st Century Oncology for alleged fraudulent billing of *fluorescence in situ hybridization* (FISH) tests. The case, which continues to unfold, is an excellent illustration of whistleblower suits against labs under current OIG medical necessity guidelines and Department of Justice enforcement policy.

The 21st Century case also satisfied what at the time was the Office of Inspector General's emerging criteria for identifying questionable billing of lab tests, criteria that the OIG would later publish in August 2014 guidance.

The Red Flags

The case began in March 2013, when Mariela Barnes filed a *qui tam* lawsuit claiming that a lab owned by 21st Century billed Medicare and Tricare for medically unnecessary FISH tests. The tests were ordered by four Fort Myers-based urologists who allegedly received bonuses from the integrated cancer center based on the number of tests they ordered. Although whistleblower cases against labs are a regular occurrence, the 21st Century case was one that proved particularly attractive to the Justice Department.

The Tests in Question: FISH tests are performed on urine to detect genetic abnormalities tied to bladder cancer. Used in conjunction with rather than in lieu of standard bladder cancer diagnostic procedures, FISH tests include both technical (sample preparation and incubation) and professional (analysis) components. In addition to being relatively pricey, FISH tests are deemed medically reasonable and necessary for Medicare coverage purposes in only two limited situations:

- To monitor for tumor recurrence in patients previously diagnosed with bladder cancer; or
- Where after a full workup of a patient with hematuria, i.e., blood in the urine, the urologist has reason to suspect bladder cancer.

FISH tests had also been at the center of another high profile False Claims Act case at the time: the Bostwick Laboratories case. (See, NIR, "Bostwick Laboratories Settles Whistleblower Case for $6 Million," for more details on the case.)

The Red Flags: The 21st Century case also satisfied what at the time was the Office of Inspector General's emerging criteria for identifying questionable billing of lab tests, criteria that the OIG would later publish in August 2014 guidance, including:

- High average allowed amount per claim;
- High average number of claims per beneficiary;
- High average allowed amount per beneficiary;
- High average number of claims per ordering physician;

- High average allowed amount per ordering physician;
- High percentage of duplicate lab tests;
- High percentage of claims with compromised beneficiary numbers; and
- High percentage of claims for beneficiaries living more than 150 miles from the ordering physician.

21st Century's billing of FISH tests not only ran afoul of these criteria but actually contributed to their crystallization by OIG as indicators of abusive practices. In addition to listing the 13 criteria, the August 2014 OIG report cited actual case examples of unnamed providers whose test billing practices raised inordinately high concerns under those criteria, including:

> "A non-IL in Florida was allowed an average of $1,193 per beneficiary, 16 times the average for non-ILs. The average allowed per ordering physician for this lab was $107,700, or 24 times the overall average for non-ILs. This lab also exceeded the thresholds for the percentage of claims with a compromised beneficiary number, the percentage of claims for beneficiaries who lived more than 150 miles from the ordering physician, and the percentage of duplicate lab tests. This lab was allowed $7.8 million in 2010."

Of course, that "Florida non-IL" was later revealed to be 21st Century.

Case Chronology

And so Barnes's whistleblower suit against 21st Century proved to be the perfect case at the perfect time for the OIG and DOJ. And the case continues to unfold. Rather than risk a court battle, in January 2016, 21st Century paid $19.75 million to settle the civil charges. As the whistleblower who initiated the case, Barnes receives $3.2 million of the recovery as a share.

Following Yates Memorandum policy (See the article on the Yates Memo on page 1), the settlement released 21st Century but not the individuals responsible for the wrongdoing, opening the door to prosecutions against the four ordering urologists:

Individual Settlements by Urologists in 21st Century Oncology Case

Date	Urologist Name	Settlement Amount* (based in part on defendant's ability to pay)	Comments
Jan. 2016	Dr. David Spellberg	$1.05 million	In addition to high test volume, allegedly ordered inordinate number of gold-plated computer-assisted FISH tests billed at up to 10 times amount for standard FISH tests
Aug. 2016	Dr. Robert Scappa	$250,000	Allegedly paid bonuses based on number of FISH tests ordered
Feb. 2017	Dr. Meir Daller	$3.81 million	Allegedly ordered a national high of over 13,000 FISH tests—all to the same lab—and received $2 million in bonuses in return

One urologist, Dr. Steven Paletsky, has yet to settle. When and if he does, it will surely push the overall total recovery from the 21st Century case to over $25 million.

Labs IN COURT

A roundup of recent cases and enforcement actions involving the diagnostics industry.

Quest Pays $315K for Self-Disclosed Rent Kickbacks to MDs. **Case:** Quest Diagnostics agreed to pay $315,093 for allegedly paying kickbacks to a referral source. Quest self-disclosed the conduct which the OIG alleged involved rent payments made by one of its New Jersey labs to a medical practice at above fair market value. **Significance:** Although there's not much information available about the case, the apparent takeaway is that Quest caught the problem and used the OIG self-disclosure protocol to minimize its resulting liability. The other moral is the need to ensure that your leases with referral sources provide for fair market value rent. (See, *GCA*, Nov. 14, 2016.)

Pain Management Clinic Owner Settles False Billing Charges for $20 Million. **Case:** Pain management physician and businessman Dr. Robert Windsor may have to sell off his real estate holdings, two boats and four jet skis to come up with the $20 million he agreed to pay to settle fraud charges. The case, which started as a whistleblower suit, contends that over a four-year period, pain clinics owned by Dr. Windsor in Kentucky and Georgia billed Medicare, Medicaid and other government programs for medically unnecessary balance tests, qualitative drug screens, nerve conduction and electromyography procedures. **Significance:** The unnecessary diagnostic services are just part of the story. The government also alleges that the clinic falsely billed for online, real time intraoperative monitoring of surgeries that were not monitored by any physician, let alone by Windsor personally, despite false representations to the contrary.

HHS Temporarily Barred from Enforcing Gender Identity Parts of ACA Antidiscrimination Rule. **Case:** Section 1557 of the Affordable Care Act bans Medicare participants from committing discrimination on the basis of, among other things, gender identity. A group of religious hospital systems and medical groups challenged the law claiming that it forced medical professionals to provide gender transition and abortion services in violation of their medical judgment and religious beliefs. A federal district court in Texas agreed and issued a preliminary injunction to block HHS from enforcing the rule in a case called *Franciscan Alliance v. Burwell*. **Significance:** As the name implies, a preliminary injunction is a temporary measure rather than a final disposition of the case. A trial still needs to take place to determine if the gender identity protections of Section 1557 really are a violation of doctors' constitutional rights. In fact, some legal experts believe that the court was wrong to conclude that Section 1557 forces providers to furnish gender transition services and abortions and that the ruling will be overturned. But even if that does happen, it will probably take a long time. In the meantime, unless the preliminary injunction is lifted, HHS will be unable to enforce the gender identity nondiscrimination parts of the rule unless and until the court decides that it is enforceable. (For more on Section 1557, see "Complying with ACA's Nondiscrimination Requirements," *GCA*, Nov. 7, 2016.)

Physician Charged and Salesman Sentenced in BLS case. **Case:** The list of individuals charged and sentenced in the Biodiagnostic Laboratory Services (BLS) bribery case continues to grow. On Jan. 10, the Justice Department indicted a Passaic County doctor for taking bribes in exchange for test referrals, making him the fifth physician charged in the scheme. According to the indictment, from February 2009 through April 2013, the doctor received $130,000 from BLS employees and associates in the form of sham monthly rental, service agreement and consultation payments in exchange for referring roughly $525,000 worth of Medicare lab business. Additionally, on Jan. 18, a salesman was sentenced to 20 months in prison for allegedly bribing a physician for referrals to the lab. The salesman previously pleaded guilty to one count of conspiring to bribe a physician and one count of money laundering. **Significance:** The BLS case is a perfect illustration of the ruin that a kickback scheme can inflict on all involved. BLS had to shut down and forfeited all its assets after pleading guilty in June 2016 to kickback charges. The investigation has also generated what is believed to be a record number of prosecutions against medical professionals in a bribery case, yielding 41 guilty pleas, 27 of them from physicians. One physician has been sentenced to 37 months in prison and the other two await trial. (For more on the BLS case, see "Lab Is Sentenced as Kickback Prosecutions Continue," *GCA*, July 29, 2016).

Brief Your CEO: Yates Is Gone But Her Memo Remains, *from page 1*

The 3 Key Changes in Prosecution Policy

First, remind your executives that the Yates Memo is an internal DOJ document instructing prosecutors how to enforce federal anti-fraud laws like the FCA and AKS against corporations. The Memo is best known for its emphasis on holding individuals accountable for corporate wrongdoing. But your briefing should touch on its practical effect by summarizing the three important ways the Memo changes DOJ enforcement policy to implement that objective:

1. Labs would no longer qualify for leniency based on cooperating with law enforcement unless they furnish "all relevant facts relating to the individuals responsible for the misconduct." (*Translation:* If a lab wants a break, it has to throw responsible execs/directors/managers under the bus.)
2. Absent "extraordinary circumstances," DOJ settlements with corporations would no longer release the individuals responsible for the transgression from liability. (*Translation:* Lab execs/directors/managers must fend for themselves and can't piggyback on the lab's settlement agreement.)
3. The DOJ will sue individuals for money damages regardless of their ability to pay. (*Translation:* Being broke and uninsured will not get lab execs/directors/managers off the hook.)

As in many organizations, disconnects between a policy's promulgation and its actual implementation are not all that uncommon within the DOJ.

(For more about these changes and their practical implications for labs being investigated, see *GCA*, Dec. 2, 2015.)

How the Yates Memo Is Affecting Healthcare Prosecutions

As in many organizations, disconnects between a policy's promulgation and its actual implementation are not all that uncommon within the DOJ. So while the Yates Memo instantly captured attention when it first came out in September 2015, it also raised questions—first and foremost of which is whether the DOJ would actually follow it.

Roughly 17 months later, you can assure your executives that the answer to that question is a clear and resounding yes. Exhibit A: the DOJ's discernible pattern of bringing fraud cases against not just healthcare organizations but their individual execs/directors/managers. Here are three recent examples:

Tenet: In October 2016, Tenet Healthcare Corporation and two of its hospitals agreed to pay $513 million to settle claims of paying bribes and kickbacks in exchange for patient referrals. Under previous policy, the settlement would have likely released not just Tenet but the individuals involved. But the DOJ stayed true to the Yates Memo and on Jan. 24 indicted Tenet's former senior vice president of operations for his alleged role in the $400 million scheme, claiming that he caused the bribes and kickbacks to be paid and actively concealed the scheme by falsifying financial records and circumventing internal accounting controls.

NAHC: In September 2016, the board chairman and a senior vice president of North American Health Care (NAHC) paid $1 million and $500,000, respectively, to settle claims they had a role in the skilled nursing company's alleged billing of medically unnecessary rehabilitation services provided to residents. A week later, NAHC concluded its own separate $30 million settlement with the DOJ. Consistent with Yates Memo principles, the settlements covered only the parties involved and expressly excluded any other individuals from the release of liability, thus leaving the door open for further prosecutions.

The DOJ has also been faithful to the Yates Memo mandate of pressuring healthcare organizations into playing ball with the government by turning on their execs/directors/managers in exchange for leniency.

Tuomey: In October 2015, Tuomey Healthcare System agreed to shell out $72.4 million to settle claims of paying part-time specialists for referrals of hospital patients and falsely billing Medicare $39 million. But in accordance with Yates Memo policy, the settlement did not release the South Carolina system's individual executives. One of those executives was former CEO Ralph "Jay" Cox III, whom the DOJ claimed was the driving force behind the "sweetheart deals," undertaken despite attorneys' warnings, designed to keep physicians from referring outpatients to a new freestanding surgery center. In September 2016, Cox agreed to pay $1 million and accept a four-year ban to settle charges stemming from his personal involvement in the scheme.

The DOJ has also been faithful to the Yates Memo mandate of pressuring healthcare organizations into playing ball with the government by turning on their execs/directors/managers in exchange for leniency. The clearest evidence for this is the growing prevalence of inserting into settlement agreements a "cooperation clause" requiring the settling healthcare organization to:

- Fully cooperate with investigations into the allegations covered in the settlement, including into "individuals and entities" that the settlement does not release from liability;
- Make "former directors, officers and employees available for interviews and testimony"; and
- Furnish nonprivileged documents to the government concerning the conduct covered in the settlement.

According to Bloomberg BNA, in 2016, 46% of FCA settlements included a cooperation clause; by comparison, cooperation clauses appeared in only 17% to 32% of FCA settlements made between 2008 and 2015.

What Happens Next?

The last part of your briefing might address the future of the Yates Memo. Start with a disclaimer. Nobody can predict the future; but quickly add that based on what we know so far, which admittedly is not a lot, it looks like the Yates Memo is going to be around for at least a little while longer.

Acknowledge that internal federal government policies are always subject to change, especially when a new president takes office.

Last but not least, as Yates noted in one of her last speeches, holding individuals accountable for corporate wrongdoing is not based on political party or ideology.

However, the early indications are that the DOJ will continue to follow Yates Memo policy, at least for the time being. Acknowledge that the evidence is speculative but present it nevertheless:

- New Attorney General Jeff Sessions is a former prosecutor with a track record of aggressively pursuing corporations and white collar crime. As Washington D.C. attorney John F. Wood predicts in a Nov. 30, 2016 article for *Inside Counsel* "[C]orporate America should not expect a weakening of corporate criminal prosecutions."
- During his confirmation hearings, Sessions said he intended to increase FCA enforcement and continue the current emphasis on charging individuals tied to corporate wrongdoing. "[S]ometimes, it seems to me," Sessions testified, "that the corporate officers who caused the problem should be subjected to more severe punishment than the stockholders of the company who didn't know anything about it."
- Last but not least, as Yates noted in one of her last speeches, holding individuals accountable for corporate wrongdoing is not based on political party or ideology. It is a core principle of criminal justice that continues regardless of which party is in power. Moreover, in its short existence, the policy has proven both potent and effective in bringing corporate wrongdoers to justice.

Takeaway: There are three key points your executives should take away from your briefing:

1. *The Yates Memo is a game changer in the sense that it pits labs against their own executives;*
2. *The Yates Memo is very real and has made a discernible difference in federal fraud enforcement;*
3. *The DOJ is likely to continue following the Yates Memo policies even long after their author has left the scene.*

Fraud and Abuse Enforcement Efforts Face Declining ROI

The federal government's return on investment (ROI) in the fight against health care fraud continues a recent decline according to the latest numbers reported for the Health Care Fraud and Abuse Control Program (Program). Every year the Department of Health and Human Services and the Department of Justice must jointly report to Congress on the Program's successes and its expenditures. Those agencies issued a report on accomplishments for fiscal year 2016—the Program's 20th year—in January. While the successes are significant, the costs are as well.

Here is a rundown on some details revealed in the report:

- DOJ opened 975 criminal health care fraud investigations and 930 civil health care fraud investigations during FY 2016

- Prosecutors filed 480 criminal cases and gained convictions for 658 defendants
- OIG investigations during FY 2016 led to 765 criminal actions and 690 civil actions
- OIG excluded 3,635 individuals from participating in federal programs
- $282.1 million in mandatory funding (after $20.6 million in mandatory sequester reductions), and $681.0 million discretionary funding

The bottom line revealed in the report indicates a decline in the ROI for the Program for the third year in a row. For FY 2016 the report reveals an ROI of $5.00 for every dollar spent, for the three-year period 2014-2016. "Because the annual ROI can vary from year to year depending on the number and type of cases that are settled or adjudicated during that year, DOJ and HHS use a three-year rolling average ROI for results contained in the report," the agencies explain in their report every year.

Here's how that ROI compares to the ROI reported in the annual reports going back to 2011 (reported for three year period ending in the reported fiscal year):

FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
$7.20	$7.90	$8.10	$7.70	$6.10	$5.00