

November 2018

## INSIDE THIS ISSUE

### TOOL

Model Religious Accommodations Policy ..... 4

### OIG WORK PLAN MONTHLY REVIEW

October 2018 ..... 6

### REIMBURSEMENT TRENDS

Part B Medicare Lab Payments Up Slightly in 2017 ..... 7

### ENFORCEMENT TRENDS

Feds Administer a Double Dose of Civil Monetary Penalty Increases ..... 9

### LABS IN COURT

A roundup of recent cases and enforcement actions involving the diagnostics industry ..... 10

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## Upcoming Events

### Webinar

**Lab and Pathology Coding and Billing Update for 2019**

November 13, 2018

Register at: [G2Intelligence.com](http://G2Intelligence.com)

### Lab Leadership Summits

**Lab Reimbursement Summit 2019: Practical Strategies for Maximizing Revenue and Minimizing Claim Denials in 2019**

December 6, 2018, Las Vegas, NV

[www.lableadershipsummits.com](http://www.lableadershipsummits.com)

## Compliance Perspectives:

### The Duty to Accommodate the Religious Beliefs of Employees & Job Applicants

#### YOU MAKE THE CALL

**SITUATION:** A worker notifies management that he can't comply with hospital policy requiring all workers to get an annual flu shot because of his religion. He asks for permission to wear a protective mask instead. After two years of agreeing to the request, management holds the line in the third year and insists on the shot. When the worker refuses, he's fired.

**QUESTION:** What did the hospital do wrong?

**ANSWER:** According to a new US Equal Employment Opportunity Commission (EEOC) lawsuit, the hospital committed religious discrimination.

*Continued on page 2*

## Case of the Month: Anthem Settles Massive HIPAA Breach Case for Record \$16 Million

**Pop Quiz:** What's the highest amount a health care entity ever paid to the HHS Office for Civil Rights (OCR) to settle a HIPAA violation?

The answer *used* to be \$5.5 million paid by Advocate Health back in July 2016. But now that record has been shattered to smithereens thanks to the newly announced Anthem \$16 million HIPAA settlement.

### What Happened

Everything about this story is super-sized—not just the settlement amount but the entity that paid it, Anthem, the nation's second largest health insurer providing coverage one in eight Americans. Of equal magnitude were the cyberattacks it experienced in 2015 which compromised the PHI of nearly 79 million people affiliated with Anthem health plans, the largest health data breach in history.

*Continued on page 8*

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**G2 Compliance Advisor**  
(ISSN 2332-1474) is published by  
G2 Intelligence, Plain Language  
Media, LLLP, 15 Shaw Street, New  
London, CT, 06320.  
Phone: 888-729-2315  
Fax: 855-649-1623  
Web site: [www.G2Intelligence.com](http://www.G2Intelligence.com).

### ■ The Duty to Accommodate the Religious Beliefs of Employees & Job Applicants, from page 1

Federal and state laws ban employers from discriminating against employees on the basis of religion. Mere tolerance of religious differences in the workplace isn't enough to comply. Employers must also take affirmative steps to accommodate religious beliefs to the point of undue hardship. The EEOC is contending that the hospital's refusal to let the worker wear a mask instead of getting vaccinated violated that duty and forced him to choose between his religion and his job.

### The Importance of an Accommodations Policy

Ultimately, the court will have to determine if the EEOC is right—assuming, of course, the hospital isn't pressured into settling the case. The one thing that is sure in this and other cases alleging failure to accommodate an employee's religion is that the employer's accommodations policy will play a key role in determining liability. In addition to being an essential part of your legal defense, having the right policy will help your lab avoid discrimination complaints in the first place.

### 10 Key Elements

EEOC regulations don't specifically mention accommodations policies let alone suggest what they should contain. But based on government guidance, court cases and best practices, we can identify 10 elements such policies should include.

#### 1. Policy Statement

Start with a statement expressing your lab's commitment to provide a workplace where all individuals are treated with tolerance or respect regardless of faith and reasonable accommodations are made for sincerely-held religious beliefs and practices.

#### 2. Definition of Religion

Define "religion" broadly as including not just traditional and organized religions but broader spiritual beliefs and practices not associated with a particular church, provided that those beliefs and practices:

- ▶ Guide personal conduct;
- ▶ Are an integral part of personal identity; and
- ▶ Are sincerely held.

#### 3. Definition of Creed

If your state requires it, extend your accommodation to cover not just religion but also "creed," which should be defined as personal beliefs or practices that meet the above 3 criteria for "religion" but which are either held by a person not associated with the religion or non-religious in nature.

#### 4. Definition of Accommodations

Define "accommodations" as reasonable exemptions or modifications of work schedules, policies and procedures allowing for employees' (or job applicants') sincerely-held religious beliefs. List examples such as:

- ▶ Time for prayer during the work day;
- ▶ Leaves or absences for religious observances;
- ▶ Revisions or exemptions to dress codes and personal appearance policies, e.g., exemptions from a no-beards policy;
- ▶ The display of religious symbols;
- ▶ Accommodation of dietary restrictions or fasting.

### **5. Definition of Undue Hardship**

Explain that the duty to accommodate doesn't require accommodations imposing undue hardship and that undue hardship is based on cost, feasibility, health and safety, and other considerations. List examples, e.g., accommodations that would cause substantial disruption or endanger health and safety, like exempting employees who wear turbans from hardhat requirements in work areas where significant head hazards exist.

### **6. Individual Responsibilities**

List the responsibilities of individuals responsible for implementing the policy, including management, supervisors and employees themselves.

### **7. Accommodations Procedures**

Set out procedures and for religious accommodations requests, including:

- ▶ Requiring employees seeking accommodations to make a written request;
- ▶ Materials they must submit to support the request;
- ▶ Responding to, evaluating and notifying employees of results of requests; and
- ▶ Appealing denials.

### **8. Criteria for Evaluating Accommodations Requests**

Say that you'll evaluate accommodation requests on a case-by-case basis in accordance with the requestor's individual needs and unique circumstances involved. List the criteria used—and not used—to evaluate requests. The latter should include:

- ▶ Personal opinions or perceptions of organization employees about the religious belief or practice;
- ▶ How granting the accommodation may harm morale, e.g., "if I let this employee not work on Sabbath, other employees will demand weekends off";
- ▶ Unreasonable preferences of a client or third party, e.g., an employee's preference that his co-workers be Christian.

### **9. Confidentiality**

Promise to keep accommodations request records in a secure location, separate from employee or job applicant personnel files and confidential and not use or disclose them except as required by law.

### **10. Assurance of Non-Retaliation**

State that no person will suffer adverse employment treatment or consequences in retaliation for requesting or receiving religious accommodations under your policy. 

## TOOL: Model Religious Accommodations Policy

*Mere tolerance of religious differences in the workplace isn't enough. Federal and state discrimination laws also require employers to take affirmative steps to accommodate the religious beliefs of employees and job applicants to the point of undue hardship. The starting point for compliance is implementing an accommodations policy. Here's a model you can adapt for your own lab based on the circumstances and specific state or local regulatory requirements.*

### RELIGIOUS ACCOMMODATIONS POLICY

#### 1. POLICY STATEMENT

Individual freedom of religion is a core value of XYZ Laboratories (XYZ). To that end, XYZ is committed to providing a work environment in which persons of all faiths and religions are treated with dignity and respect and nobody is forced to choose between their religious beliefs and their employment duties. XYZ's policy is to make good faith efforts to make religious accommodations for employees and job applicants whose sincerely held religious beliefs and creed conflict with their employment obligations under XYZ policies, procedures or practices to the extent such accommodations are reasonable and do not impose undue hardship.

#### 2. PURPOSE

The purpose of this Policy is to establish clear, fair and consistent rules and procedures for requesting, determining and implementing reasonable religious accommodations.

#### 3. DEFINITIONS

For purposes of this Policy:

**A. Creed** encompasses both religious and non-religious beliefs and practices that have a nexus or connection to an organization, community or shared system of belief, govern one's conduct and are sincerely held and integrally linked to personal identity, self-definition, and fulfillment.

**B. Religion** encompasses not just traditional and organized religions but broader religious beliefs and practices, including those that are new, uncommon, or not associated with a formal church or sect, including but not limited to indigenous spirituality, provided that such beliefs are sincerely held and integrally linked to personal identity, self-definition, and fulfillment.

**C. Religious** means based on religion and/or creed.

**D. Religious accommodations** mean reasonable allowances from or revisions to employment rules, procedures or schedules and/or alterations of the work environment that enable an employee or job applicant to practice or otherwise observe a sincerely held religious practice or belief without causing XYZ undue hardship. Such accommodations may include, without limitation:

- Time for prayer during a work day;

- Leaves or absences for religious observances;
- Allowances to dress codes and personal appearance policies, e.g., exemptions from hairstyle or beard policies to accommodate beards;
- The display of religious symbols;
- Accommodation of religion- or creed-based dietary restrictions or fasting.

**E. Undue hardship** means significant difficulty or expense based on XYZ resources and circumstances affecting the cost, feasibility or difficulty of providing a specific accommodation. Examples of accommodations inflicting undue hardship include, without limitation, those that would be unduly expensive, substantially disruptive in a way that exceeds mere business inconvenience, require fundamental changes to business operations, and/or threaten any person's workplace health and safety.

#### 4. RESPONSIBILITIES OF DIFFERENT PARTIES

All XYZ Company employers, supervisors and employees have shared responsibilities in implementing this Policy:

**A. Employer:** As the employer, XYZ is responsible for:

- Ensuring that all job applicants and employees are afforded equal opportunity and treated with professionalism, dignity and respect in the workplace regardless of their religion;
- Ensuring that all workplace policies and procedures are non-discriminatory;
- Furnishing the resources necessary to implement this Policy;
- Ensuring that employees and job applicants are advised of their accommodation rights;
- Ensuring that requests for religious accommodations are addressed in a timely, fair, sensitive and, if possible, confidential manner based on the individual needs and circumstances involved;
- Ensuring that reasonable accommodations are provided to the point of undue hardship;
- Reviewing and revising this Policy as necessary to ensure its effectiveness.

**B. Supervisors:** Supervisors are responsible for:

- Fostering an inclusive work environment by personally treating all employees and job applicants with professionalism, respect and dignity regardless of religion;
- Ensuring that the employees they supervise treat all employees and job applicants with professionalism, respect and dignity regardless of religion;
- Taking reasonably necessary steps to help XYZ eliminate the barriers that prevent individuals from enjoying equal opportunity;
- Dealing with requests for religious accommodations in a timely, fair, sensitive and, if possible, confidential manner based on the individual needs and circumstances involved;
- Cooperating with individuals during the religious accommodations process, including but not limited, to ensuring that such individuals are notified of the information needed by XYZ to evaluate their accommodation requests;
- Helping XYZ implement reasonable accommodations provided;
- Helping XYZ Company review and revise this Policy as necessary to ensure its effectiveness.

**C. Employees & Job Applicants:** Employees and job applicants requesting accommodations are responsible for:

- Fostering an inclusive work environment by personally treating all employees and job applicants with professionalism, respect and dignity regardless of religion;

## 5. ACCOMMODATIONS PROCEDURES

**A. Requesting Accommodations:** Employees and job applicants should request religious accommodations in writing by completing the Religious Accommodations Request Form. Employees should give the completed Request Form to their supervisor. Job applicants should give the completed request form to the HR Department.

**B. Deadline for Requests Involving Absences:** Requests for accommodations involving time off from work for religious holidays and observances must be made as early as possible, and no later than 10 business days in advance of the requested day(s) off.

**C. Supporting Documentation:** Where requested, employees and job applicants will provide information to support their requests, including without limitation, documentation verifying their need for accommodation.

**D. Response:** XYZ will respond to all requests for religious accommodations in a timely, fair, sensitive and, if possible, confidential manner.

**E. Criteria for Evaluation:** Requests for religious accommodations will be evaluated case by case based on the individual's needs and circumstances involved, including but not limited to, with regard to financial costs, feasibility of implementation, impact on business, operations, job duties, health and safety, duration and availability of reasonable alternatives. Personal feelings and perceptions of XYZ officials with regard to the religious belief or practice are totally irrelevant and will in no way factor into the evaluation of religious accommodation requests. Nor will any of the following factors be used as criteria in the evaluation:

- The accommodation's impact on the morale of other employees;
- Unreasonable customer or third party preferences, e.g., an employee's preference that his co-workers be Christian;
- The fact that an otherwise reasonable accommodation is banned by a contract;
- The perception that the religious belief or practice is unreasonable.

**F. Notification of Response:** XYZ will notify all employees and job applicants who request religious accommodations of the response to their requests. If the request accommodation is denied, the individual will be notified of the reasons and, if feasible, offered alternative accommodations.

**G. Appeals:** Employees and job applicants who are not satisfied with the response to their religious accommodation requests may file an appeal with the XYZ HR Department. However, individuals are also expected to accept alternative accommodations that are reasonable and meet their needs, even if such alternatives are not their first preference.

## 6. PRIVACY & CONFIDENTIALITY

XYZ will keep all records of religious accommodations requests in a secure location, separate from employee or job applicant personnel files and kept confidential to the extent required by applicable laws.

## 7. NO RETALIATION

No employee or job applicant will receive adverse treatment regarding their employment or job application in reprisal or retaliation for requesting or receiving religious accommodations. XYZ Company officials and personnel who engage in retaliatory actions in violation of this Policy will be subject to discipline up to and including termination. 

## OIG Monthly Work Plan Review: October 2018

October saw five new OIG Work Plan items. One has direct implications for labs, while two have potential implications for some labs. These three items are detailed below.

### 1. CMS Medicare Beneficiary Identifier Card

**Issue:** The Medicare Access and CHIP Reauthorization Act of 2015 requires CMS to remove Social Security numbers from Medicare cards. As a result, CMS is replacing the existing health insurance claim number with a Medicare Beneficiary Identifier (MBI).

**OIG Action:** The OIG will conduct a series of reviews to assess controls in place to distribute and implement usage of the MBI. It will determine the number and nature of Medicare cards returned as undeliverable, and the extent to which CMS tracks and follows up on Medicare cards returned as undeliverable. Additionally, OIG will assess CMS's safeguards in place to protect the MBI. Finally, it will conduct a review of payments to providers to determine whether Medicare cards deemed high risk and cards mailed and returned as undeliverable are being used for inappropriate items and services.

### 2. Medicaid Capitation Payments Made on Behalf of Incarcerated Individuals

**Issue:** States contract with Medicaid managed care organizations to provide specific services to enrolled Medicaid beneficiaries, usually in return for a predetermined periodic payment, known as a capitation payment. The Social Security Act and guidance from CMS state that federal financial participation is not available for services provided to inmates of public institutions, except when the inmate is not in a prison setting and becomes an inpatient in a medical institution.

**OIG Action:** The OIG will determine whether select states made unallowable capitation payments to Medicaid managed care organizations on behalf of individuals who were incarcerated.

### 3. Data Brief: Early Results from the Opioid State Targeted Response Grants

**Issue:** The 21st Century Cures Act authorized \$1 billion in Opioid State Targeted Response (Opioid STR) grants, to be awarded and overseen by the Substance Abuse and Mental Health Services Administration (SAMHSA). According to SAMHSA, the purpose of these grants is to “address the opioid crisis by increasing access to treatment, reducing unmet treatment need, and reducing opioid overdose related deaths through the provision of prevention, treatment and recovery activities for opioid use disorder.” The majority of funds must be used for opioid treatment services using clinically appropriate evidence-based practices, particularly the use of medication assisted treatment.

**OIG Action:** The OIG will review early results of the Opioid STR grants, with a focus on states' use of funds in the first year of the program, including the populations reached and the extent to which grant-funded treatment included medication assisted treatment. 

## Reimbursement Trends: Part B Medicare Lab Payments Up Slightly in 2017

According to a [new OIG report](#), Clinical Laboratory Fee Schedule payments for lab tests in 2017, the last year under the pre-PAMA payment system, totaled \$7.1 billion, up slightly from the \$6.8 billion Medicare paid in 2016 but little changed over the entire four years of the baseline period. The table below shows where that money went.

### How Medicare Spent Its \$7.1 Billion for Lab Tests in 2017

Tests	Beneficiaries	Labs	Providers
<b>433 million:</b> total tests billed <b>3.4:</b> average number of tests received by beneficiaries per day <b>17:</b> average number of tests per day for top 1% of beneficiaries	<b>28 million:</b> beneficiaries that received at least one test 16: average number of tests per beneficiary 86: average number of tests per beneficiary among top 1% of beneficiaries	<b>56,859:</b> labs that received Medicare payments <b>\$125,388:</b> average payments per lab <b>\$1.1 billion:</b> payments to top 3 labs	<b>655,771:</b> providers that ordered lab tests <b>466:</b> average tests ordered per provider <b>5,964:</b> average tests ordered by top 1% of providers

Source: OIG, "[Medicare Payments for Clinical Diagnostic Laboratory Tests in 2017](#)"

\* Note: For a comparison to 2016 data, see [NIR, Oct. 2017](#), page 1

### What Medicare Paid for Top 25 Lab Tests

The OIG report includes detailed analysis of the 25 most frequently ordered lab tests. While the top 25 tests always generate the lion's share of payments, that trend was even more pronounced in 2017:

Year	Total	Percentage of All CLFS Payments
2017	\$4.5 billion	64%
2016	\$4.3 billion	63%
2015	\$4.1 billion	58%
2014	\$4.2 billion	59%

Other Report findings for the top 25:

- ▶ 17 of the top 25 tests have been in the top 25 for all four years of the review;
- ▶ The top five tests accounted for \$2.2 billion, or 30% of all payments for lab tests in 2017;
- ▶ The rankings of the top five tests haven't changed in four years;
- ▶ One percent of labs (272 out of 27,171 labs) received 55% of all Medicare payments for the top 25 lab tests in 2017. 

### ■ Case of the Month: Anthem Settles Massive HIPAA Breach Case for Record \$16 Million, From Page 1

One of the malevolent aspects of the story is that the hackers apparently worked for a foreign government. But the methods he/she used to get into Anthem's IT system are the same ones used against your lab every day, namely, a sustained series of phishing emails to employees posing as correspondences from trusted sources asking for passwords access information. Employees who should have known better bit, prying the doors wide open.

Anthem discovered the attacks on Jan. 29, 2015 and filed a breach report with the OCR on March 13. OCR investigators discovered that the attacks actually began in early December 2014 and that the data extracted included names, social security numbers, medical identification numbers, addresses, birth dates, email addresses and employment information of nearly 79 million individuals.

### What Anthem Did Wrong

The OCR investigation concluded that Anthem didn't do enough to prevent and contain the attacks. Deficiencies cited included:

- ▶ Failure to conduct enterprise-wide risk analysis;
- ▶ Inadequate procedures for regular review of information system activity;
- ▶ Failure to detect and respond to suspected or known security incidents; and
- ▶ Failure to implement adequate minimum access controls to prevent cyberattacks.

### The Price Tag & Lessons

The \$16 million Anthem has agreed to pay OCR to settle its HIPAA liabilities is in addition to the \$115 million the insurance giant shelled out to settle a class action with the victims, a record for a health data breach civil lawsuit.

### Investigative Journalist Wins Kellison Award



John Carreyrou, the Pulitzer prize-winning journalist who exposed Theranos as a fraud, was presented with the Kellison & Company Distinguished Service Award at Lab Institute. Pictured here are Mark

Ziebarth, Publisher and CEO at G2 Intelligence, which put on the 36th annual Lab Institute in Washington, DC Oct. 24-16 (left); award winner Carreyrou (center); and Kevin Ellison, founder of Kellison & Company, who presented the award (right). Carreyrou, a *Wall Street Journal* reporter, wrote a series of articles poking holes in the Theranos' claims of a breakthrough on testing with fingerprick samples of blood. 

The settlement isn't just about money. Anthem also had to accept a draconian Corrective Action Plan requiring specific improvements to its data security systems to ensure compliance with HIPAA requirements, including:

- ▶ A Risk Analysis program;
- ▶ Detailed IT policies and procedures;
- ▶ Mandatory information security training; and
- ▶ Annual progress reports to OCR. 

## Enforcement Trends: Feds Administer a Double Dose of Civil Monetary Penalty Increases

Potential penalties for Medicare violations will be higher if they're assessed on or after Oct. 11, 2018. That's when the [newly announced](#) Dept. of Health and Human Services' (HHS) inflation-adjusted civil monetary penalties (CMPs) take effect. And that's only the beginning of the story.

### CMPs & Annual Adjustments

Along with imprisonment, criminal fines and exclusion, CMPs are among the penalties that can befall a lab that commits Medicare fraud and abuse. CMP amounts are listed in a schedule that varies based on the type of offense and can run to up to three times the amount of illegal remuneration a lab offers, pays, solicits, or receives.

In 2015, Congress passed a law requiring HHS and other federal agencies that use CMPs to enforce their regulations to:

- ▶ Make an initial baseline or "catch-up" adjustment to their CMPs; and
- ▶ Starting in 2017, adjust those CMP amounts for inflation each year after that using the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October.

### Annual Inflation Adjustments for 2018

For its 2018 adjustment, HHS applied a 1.02041 inflation multiplier, which translates into a 2.041% increase. Effective dates depend on not just the date the CMP is assessed but also the date the violation occurs:

- ▶ Oct. 11, 2018 for assessment of CMPs for violations occurring on or after Nov. 2, 2015;
- ▶ The pre-adjustment CMP amounts in effect before Sept. 6, 2016 for violations occurring before Nov. 2, 2015 and/or for adjustments to CMPs assessed before Sept. 6, 2016.

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### WEBINAR ANNOUNCEMENT

**Lab & Pathology Coding and Billing Update for 2019:  
What Every Clinical and Anatomic Pathology Lab  
Needs Know and Do to Comply with the Sweeping New  
Medicare and Medicaid Coding and Billing Changes  
that Take Effect January 1, 2019**



**Presenter:** Diana Voorhees,  
Principal, DV & Associates, Inc.

**When:** Tuesday, November 13, 2018  
– 1:00 PM Eastern (11:00 AM Pacific)

**Duration:** 90 minutes

To register, visit [www.g2intelligence.com](http://www.g2intelligence.com)  
Or call Customer Service at 1-888-729-2315

### The Other CMP Increase

It's not just the annual inflation adjustment. This year's federal budget bill, aka, the [Bipartisan Budget Act of 2018](#) also increased the maximum amounts of many CMPs significantly above 2.041%. For example, the maximum CMP has increased from \$55,262 to \$100,000 for:

- ▶ Knowingly making or causing to be made a false statement, omission or misrepresentation of a material fact in any application, bid, or contract to participate or enroll as a provider or supplier; and
- ▶ Making or using a false record or statement that is material to a false or fraudulent claim. 

# Labs IN COURT

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

## Aetna Settles with States of Victims of HIV Meds Envelope Privacy Snafu

**Case:** Aetna is still paying for a disastrous miscalculation that may have revealed the HIV status of 12,000 beneficiaries that occurred in July 2017 when it mailed them information about their HIV medications in envelopes with a transparent window. Last January, the insurance giant settled a class action lawsuit for a staggering \$17.2 million. (For the details of the case, see [GCA, March 12, 2018](#)). And now Aetna has agreed to shell out an additional \$640K to settle three more claims brought by state attorneys general on behalf of the residents whose PHI may have been revealed as a result of the breach, including New Jersey (\$365.2K), Connecticut (\$100K) in Connecticut and Washington, DC (\$175K).

**Significance:** You don't need to be reminded of the seriousness of HIPAA breaches. The real takeaway for lab managers: The measures the settlements require Aetna to take to ensure the privacy of patient mailings containing PHI, including:

- ▶ Using envelopes that obscure the contents;
- ▶ Ensuring that the return address contains no identifying information other than a P.O. box, city, state and ZIP code; and
- ▶ Putting a statement on the envelope front stating: "Confidential Legal Information—To Be Opened Only By the Addressee."

## Lab CEO Pleads Guilty to Distributing Medically Unnecessary Opioids

**Case:** The CEO of Tri-County Wellness Group and owner of labs and pain clinics in Michigan and Ohio, pleaded guilty to criminal charges for his role in \$300 million health care fraud scheme involving distribution of over 6.6 million doses of medically unnecessary oxycodone, hydrocodone and other controlled substances to Medicare patients, some of whom were drug addicts. to narcotics. Some of these opioids were allegedly resold on the street. In addition to \$51 million in cash, the CEO will forfeit the other fruits of the scheme including \$11.5 million in real estate and Detroit Pistons season tickets.

**Significance:** The Tri-County case is one of the earliest and biggest of the opioid schemes involving labs and pain clinics. In September 2017, a 72-year-old physician pled guilty to conspiring with two other Detroit-area providers, to carry out the scheme by:

- ▶ Prescribing the drugs;
- ▶ Directing physicians to make Medicare patients that wanted an opioid prescription to first undergo medically unnecessary facet joint injections and lab tests; and
- ▶ Telling physicians to refer those services to labs, clinics and other facilities in which he had secret ownership interests.

## Alabama Hospital and Lab Subsidiary Agree to \$4.25 Million Kickback Settlement

**Case:** Aperian Laboratory Solutions and its parent East Alabama Medical Center will fork over \$4.25 million + legal costs to settle charges of paying kickbacks for referrals and then falsely billing Medicare for the ill-gotten tests. The case contends that Aperian paid percentage commissions kickbacks to a pair of nationwide marketing companies in exchange for arranging doctors to refer toxicology tests to the lab. The companies, Summit Diagnostics and Compass Laboratory Solutions, entered into separate settlements of nearly \$2 million.

**Significance:** The case began when a former Aperian employee told his supervisors about the scheme and asked them to stop it. When those calls fell on deaf ears, he brought a qui tam whistleblower lawsuit and now stands to collect between 15% to 25% of the total recovery.

## Kentucky Lab Owner Indicted for Medicaid Testing Felonies

**Case:** A Kentucky grand jury indicted the 44-year-old owner of an Indiana cytology lab of falsely billing the state Medicaid program for tests. Specifically, the indictment claims that the lab didn't have a qualified medical director as required by Medicaid billing rules.

**Significance:** The lab owner faces two charges: i. theft by deception of over \$10K, a Class C felony; and ii. devising or engaging in a scheme to defraud the Kentucky Medical Assistance Program of \$300 or more, a Class D felony.

## Florida MD Practices Shell Out \$58.3K for Accepting Millennium Test Cup Freebies

**Case:** The round-up of physicians that accepted free point of care test (POCT) cups from Millennium Laboratories continues with a pediatrician and internist and their respective Jacksonville practices the latest to get roped in. The now bankrupt lab used the freebies as a form of remuneration paid to physicians in exchange for referrals of custom profile panels and other tests to carry out what the feds claim is the largest ever kickback scandal involving lab services.

**Significance:** After collecting \$256 million from Millennium, the feds have spent the past 12 months targeting the physicians on the receiving end of the POCT cup scandal. (For more on the physician crackdown, see, GCA, June 18, 2018). The \$58,300 the Jacksonville defendants agreed to pay in this case is the second lowest of the settlements so far.

### Millennium Free POCT Cup Physicians Settlement Scorecard

Date	Provider(s)	Settlement Amount	Individual Physicians Also Charged?
Sept. 6, 2018	Doctor's Inlet Pediatrics and Primary Care, P.A., and Avenues Pediatrics and Internal Medicine (Florida)	\$58,370	YES
May 24, 2018	Recovery Pathways, LLC (Michigan)	\$64,555	NO
April 5, 2018	Affordable Medical Care f/k/a Andalusia Medical Center (Alabama)	\$40,500	YES
Feb. 28, 2018	The Pain Institute, Inc. d/b/a Space Coast Pain Institute (Florida)	\$95,302	YES
Dec. 5, 2017	Addiction Medical Care of Norwalk, Practice Management Associates Norwalk, LLC, Addiction Medical Care of Columbus, and Practice Management Associates, LLC (collectively, "AMC") (Ohio)	\$79,880	NO
Sept. 27, 2017	Advanced Pain Management (Arizona)	\$186,210	NO
Sept. 18, 2017	Parallax Center, Inc. (New York)	\$64,203	NO

## Opko Health, CEO Named in Pump-and-Dump Stock Fraud Scheme

**Case:** The U.S. Securities Exchange Commission charged billionaire drug entrepreneur Philip Frost and his company, Opko Health, for participating in a market manipulation scheme allegedly organized by investor Donald Honig. According to the SEC complaint, Honig and his associates planted puff pieces about three companies they controlled and then dumped their shares leaving investors the who ponied up \$27 million to purchase them with grossly overvalued stock. Opko denies the charges and plans to fight it out in court.

**Significance:** As surely as day follows night, SEC stock fraud charges lead to private shareholder litigation. Accordingly, as many as 10 law firms are lining up to file class action lawsuits against Opko for failing to disclose the firm and Frost's role in the scheme. The market reaction to the SEC announcement forced Nasdaq to suspend trading in Opko stock for a week.

*Continued on page 12*

## Rural Hospital Lab Outreach or Fraudulent Overreach?

**Case:** In February 2017, hospital management firm LifeBrite paid \$400K to acquire a bankrupt rural outreach hospital in North Carolina with network status in Blue Cross Blue Shield North Carolina (BC). Fourteen months later, BC kicked LifeBrite out of its network after discovering what it saw as \$11 million worth of fraudulent lab billings. LifeBrite sued the insurer for renegeing on \$15.5 million in lab reimbursement payments. BC filed a counterclaim accusing LifeBrite of using the hospital as a false billing "front" to "turn a trickle of legitimate monthly billing [for toxicology urine drug tests] averaging \$37,400 into an \$8.5 million fraudulent river of gold." The suit contends that LifeBrite billed BC at inflated rates for 500,000+ urine toxicology tests which were "conducted by an affiliated lab that had no relationship with BC, or any connection to the hospital's patients, the community or medical necessity."

**Significance:** This isn't your conventional fraud case. Neither side disputes that the tests were ordered or delivered. Nor does BC contend that LifeBrite tried to conceal what it was doing. The real question is whether LifeBrite had the right to bill for the tests given that they were performed by an outside lab for non-hospital, out of network patients. BC argues that the "plain language" of the contract limits reimbursement to "tests performed by the hospital, at the hospital and for hospital patients." LifeBrite says that BC is just trying to get out of the contract and doesn't understand its business model as a provider of "outsourced high complexity testing" to other hospitals, which it says is permitted by Medicare. BC may not like the lab outreach model but that isn't the basis for a fraud claim, according to LifeBrite. It also contends that the higher reimbursement rates charged to insurers that BC cites as false billing is a legitimate part of the operational appeal of a for-profit hospital to operate a critical-access rural hospital and keep it financially viable. 



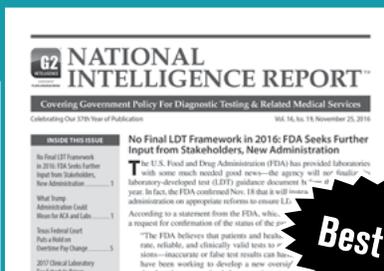
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