

Morgan Lewis

# ***FAST BREAK:*** **TELEHEALTH FRAUD**

Zane Memeger, Scott Memmott,  
Sandra Moser, and Jake Harper  
November 12, 2020



**Morgan Lewis**

# TODAY'S HOST & PRESENTERS



**Jake Harper**



**Zane Memeger**



**Scott Memmott**



**Sandra Moser**

# Telehealth Fraud

Topics to be discussed today include



**History of telehealth enforcement**



**Looking forward to future telehealth enforcement and compliance**



**The September 30 DOJ Takedown**



**Diligencing relationships and business opportunities**

# HISTORY OF TELEHEALTH ENFORCEMENT

# History of Telehealth Enforcement

Given narrow scope of actual coverage in FHCPs, telehealth fraud enforcement traditionally limited

However, dating back to 2018, agencies participating in the Medicare Strike Force coordination efforts began to increase focus and efforts on telemarketing and telemedicine-related schemes resulting in several cases being charged in connection with alleged unnecessary medical devices and genetic testing.

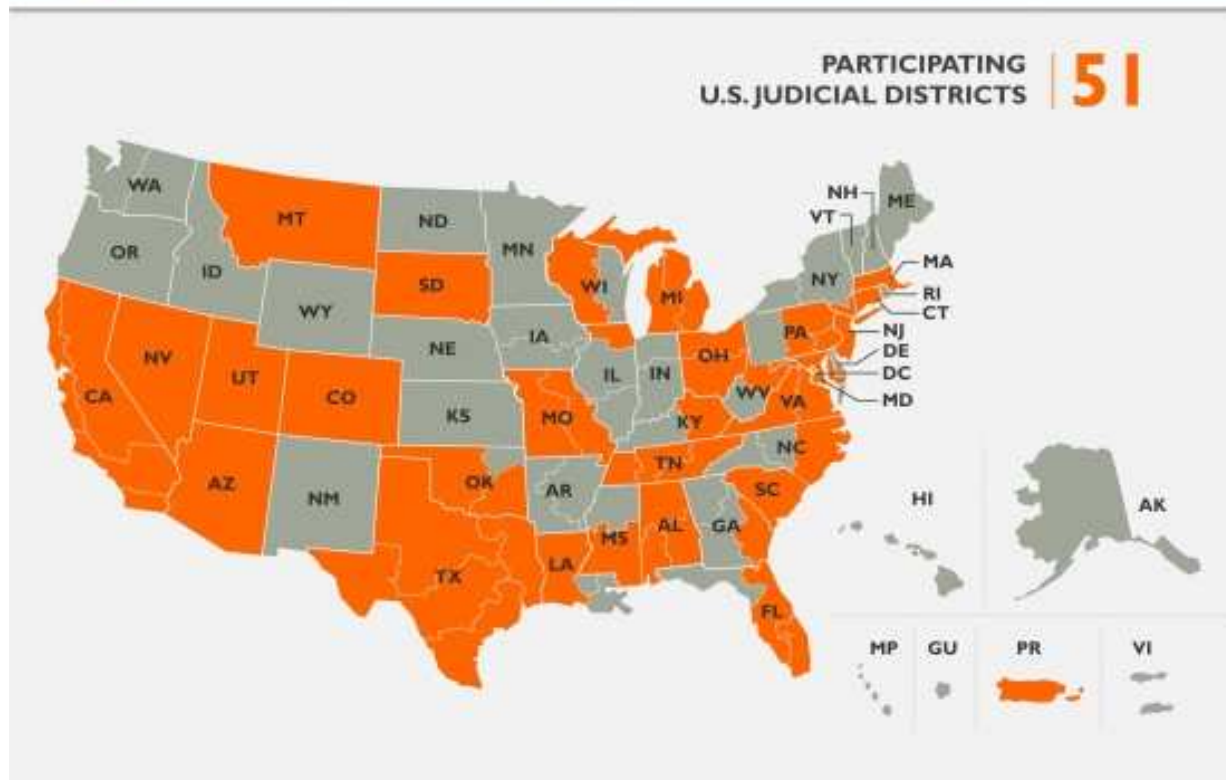
One such significant enforcement action by DOJ occurred in early 2019, involving a \$1.2 billion scheme for medically unnecessary orthotics and 24 defendants

Other minor DOJ and OIG inquiries

**SEPTEMBER 30  
DOJ TAKEDOWN**



# 2020 National Health Care Fraud and Opioid Takedown





## 2020 National Health Care Fraud and Opioid Takedown

MORE THAN **300** | DEFENDANTS  
CHARGED

MORE THAN **100** | LICENSED MEDICAL  
PROFESSIONALS CHARGED

MORE THAN **\$6 BILLION** | of ALLEGED  
LOSS

MORE THAN **30 MILLION** | PRESCRIBED  
OPIOID DOSES

<https://www.justice.gov/criminal-fraud/hcf-2020-takedown/graphics-images-resources>

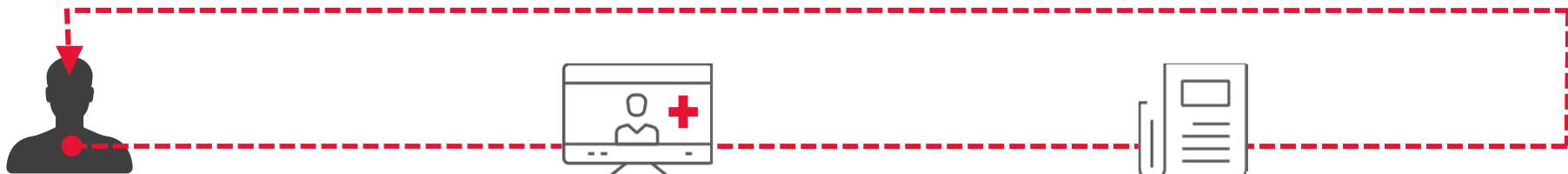


# NATIONAL TELEFRAUD TAKEDOWN

Scammers are targeting Medicare and Medicaid beneficiaries in schemes which involve the use of illegal kickbacks and bribes by durable medical equipment companies, laboratories, and pharmacies to telemedicine corporate executives in for exchange orthotic braces, diagnostic testing, and prescription drugs that are medically unnecessary.



## The ALLEGED SCHEME and KEY PLAYERS



### Telemedicine Executives

They own telemedicine companies and call centers. They use international marketing networks to lure unsuspecting individuals into a criminal scheme through telemarketing calls, direct mail, television ads, and internet pop-up ads. A call center confirms that an individual is on Medicare or Medicaid and transfers the individual to a telemedicine company for a medical practitioner's consultation.

- ! Telemedicine executives are the masterminds of this scheme. They pay practitioners for prescriptions.



### Medical Practitioner & Telemedicine Company

The telemedicine company obtains prescriptions from medical practitioners and sells them to pharmacies, laboratories, or medical equipment companies.

- ! Medical practitioners are being paid by telemedicine executives to order unnecessary prescriptions, either without any patient interaction or with only a brief telephonic conversation with patients they have never met or seen.



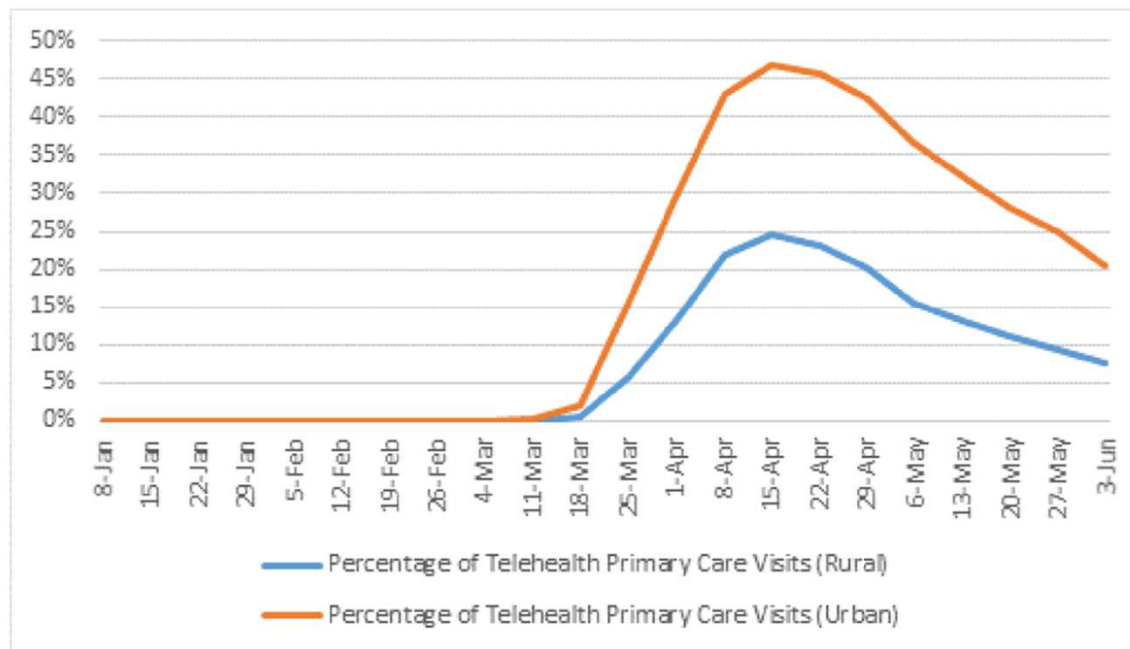
### Pharmacy, Lab, Medical Equipment Company

After the pharmacy, lab, or medical equipment company purchases the prescription, it sends the prescription to the beneficiary. Medicare or Medicaid is then billed and the telemedicine executives receive a kickback from the scam.

- ! This telemedicine fraud scheme has caused more than \$4.5 billion in loss and the revoking of Medicare and Medicaid billing privileges of over 250 medical professionals.

# **FUTURE TELEHEALTH ENFORCEMENT AND COMPLIANCE**

Figure 4. Telehealth Weekly Visits as a Percentage of Total FFS Medicare Primary Care Visits in Urban and Rural Counties



Source: Medicare claims data up to June 3<sup>rd</sup>, available as of June 16.

# Moving On?

- Telehealth enforcement to date has not focused on the actual telehealth service, but rather items and services ordered through telehealth modality
- With significant number of covered telehealth services furnished with few safeguards (i.e., claim processing edits), will the focus shift in the future?
  - OIG report and comments on additional auditing
- What should telehealth providers do now to prepare?

# **DILIGENCING RELATIONSHIPS AND BUSINESS OPPORTUNITIES**

# Explosion of Opportunities



**Significant number of business opportunities for practitioners and health care facilities related to telehealth technologies**

**Most companies are set on doing the right thing and taking compliance seriously, but many also are a) new or b) have not been involved in the FHCP space previously.**

**Most liability rests with physicians and other practitioners due to their central role in either coordinating improper activities or in preventing improper activities**

- **Administrative actions in addition to criminal/civil exposure**

# Join us next month!

Please join us for next month's webinar:

## ***Fast Break: A Year in Review 2020***

Featuring

Jake Harper

➤ Thursday, December 17, 2020 3:00 PM (EST)

# Thanks and Be Well!



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Zane handles a wide variety of litigation matters, including government investigations, internal investigations, compliance counseling and training, and other white collar matters involving major representations across all industries. Zane's matters often involve allegations of government program fraud (e.g., Medicare, Medicaid, The Paycheck Protection Program and Healthcare Enhancement Act), and alleged violations of the False Claims Act (FCA), the Anti-Kickback Statue (AKS), and the Foreign Corrupt Practices Act (FCPA). Zane returned to Morgan Lewis in 2017 after serving for nearly seven years as the United States Attorney for the Eastern District of Pennsylvania. As US attorney, he led an office of 130 lawyers who investigated and prosecuted cases involving national security, official corruption, healthcare fraud, government fraud, financial fraud, and other federal offenses.



# Thanks and Be Well!



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Scott represents life sciences and healthcare organizations in government and internal corporate investigations; civil, criminal, and administrative enforcement actions by government agencies; and complex civil and criminal litigation. Scott handles a range of fraud, abuse, and compliance matters involving the False Claims Act, the Anti-Kickback Statute, the Stark Law, off-label promotion, government reimbursement, and quality of care for global pharmaceutical and medical device manufacturers; healthcare providers, suppliers, and payors; biotechnology companies; contract research organizations; diagnostic testing facilities; and laboratory equipment manufacturers. Scott served as a Special Assistant US Attorney in the Eastern District of Virginia and a Trial Attorney at the US Department of Justice.

# Thanks and Be Well!



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Sandra is a partner in Morgan Lewis's white collar litigation and government investigations practice and former chief of the US Department of Justice's Fraud Section in Washington, DC. The Criminal Division's Fraud Section has exclusive jurisdiction over the Foreign Corrupt Practices Act and stands up the DOJ's Medicare Strike Forces in roughly two dozen districts around the country. A veteran trial lawyer, she represents companies and executives in a wide range of matters involving the US Department of Justice (DOJ), the Securities and Exchange Commission (SEC), US Congress and various other domestic and international enforcement agencies. Sandra is admitted in the District of Columbia and New Jersey only; Pennsylvania admission pending. Her practice is supervised by PA Bar members.

# Thanks and Be Well!



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Jake advises stakeholders across the healthcare industry, including hospitals, health systems, large physician group practices, practice management companies, hospices, chain pharmacies, manufacturers, and private equity clients, on an array of healthcare regulatory, transactional, and litigation matters. His practice focuses on compliance, fraud and abuse, and reimbursement matters, self-disclosures to and negotiations with OIG and CMS, internal investigations, provider mergers and acquisitions, and appeals before the PRRB, OMHA, and the Medicare Appeals Council.