



NAMAS Weekly Auditing & Compliance Tips

December 30, 2016

DOJ Announces \$4.7 billion in False Claims Act Recoveries: But What Does That Really Mean?

The Department of Justice (DOJ) recently announced that it had recovered \$4.7 billion in False Claims settlements and judgments making it the "third best year" in "False Claims Act History." Trumpeted by many as a return to DOJ's record setting years, an examination of the numbers over time reveals that healthcare recoveries have actually been remarkably consistent over the past seven years, and that then they say more about the emphasis DOJ places on resolving "big" cases than they do about overall fraud enforcement.

A Dependence on Large Cases

Big settlements make for impressive press releases and are good for overall numbers, and FY 2016 was no exception. The "Top 5" settlements in 2016 accounted for \$2.5 billion, an amount that accounted for over 52% of all federal recoveries for the year; and the total announced recoveries for these five cases was \$3.55 billion! Following the playbook, the "Top 5" healthcare settlements accounted for a whopping 60% of all federal healthcare recoveries in 2016 at just a tick over \$1.5 billion. This dependency on large settlements is not new. Indeed, according to research that we have conducted, the five largest settlements have consistently accounted for over 50% of recoveries in virtually every calendar year since 2012 - if not longer.

Healthcare Recoveries Have Been Remarkably



We'd like to wish you a happy and prosperous New Year!

The NAMAS office will be closed on Monday, January 2nd

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Stable

Despite dependence on obtaining a few large settlements each year, DOJ's \$2.6 billion in healthcare recoveries for FY 2016 continued a trend of surprising stability in recoveries attributable to healthcare. Beginning in FY 2010 with the recovery of \$2.5 billion, over the next seven years (including 2016), healthcare recoveries have averaged \$2.5 with a consistency that belies the suggestion that enforcement has been "up and down" or inconsistent. The recoveries over that period of time are as follows: FY 2010: \$2.5B, FY 2011: \$2.4B, FY 2012: \$3.1B, FY 2013: \$2.7B, FY 2014: \$2.4B, FY2015: \$2.1B, and FY 2016: \$2.6B!

Recent Fluctuations in Recoveries Are Linked to Major Housing and Financial Fraud Settlements - They Do Not Appear to Be Related to Overall Enforcement

Although the fluctuations in recovery totals from year to year are often attributed to overall enforcement efforts, healthcare recoveries have been consistent over the last seven years and the differences in overall recoveries have directly tied to the ability of the DOJ to finalize major Housing and Financial Fraud Settlements. In 2012, the "record recoveries" reported by DOJ year were largely due to the \$1.7 billion it received as part of the landmark housing settlement; and the next (and current) record of \$6 billion recovered in 2014 was fueled by the \$3.3 billion that came from banking and housing settlements. In 2016, the "third best year", was much the same with \$2 billion in housing and banking settlements.

Recovery Totals Do Not Necessarily Equate to Enforcement Success or Efficiency

Enforcement is typically defined as the process of ensuring compliance with the applicable laws and regulations. There is a tendency to equate to larger recoveries with greater or more effective enforcement, but is that really the case? Isn't it fair to ask whether the \$9 billion that DOJ recovered between 2012 and 2016 in Housing and Financial Fraud settlement cases is a measure of "less" enforcement of the industry rather than more? Should we expect better enforcement to result in less fraud and lower recoveries in the long run?

Prevention is the most cost effective form of enforcement, but large fines and mandatory Corporate Integrity Agreements (CIAs) are also said to be important components of enforcement for their deterrent effect on future misconduct. 2016, however, does not provide much evidence of the impact of deterrence. This was the second time Pfizer entered into large settlements for Wyeth since it acquired the company (\$784.6 million in 2016 and \$413.2 in

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NAMAS Calendar of Events



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Upcoming Webinars

NAMAS is proud to present the following webinars in November



Considering the Disease Process in Your Audit

Speaker: Dr. R. Kendall Smith
January 3, 2017
2pm EST

How to Create a Successful Audit Policy

Speaker: Shannon DeConda
January 10, 2017
2pm EST

Compliance Resolutions

Speaker: Sean Weiss
January 17, 2017
2pm EST

2013); Novartis' settlement was its second since 2010 (\$410 million and \$495 million); Tenet's settlement of \$513 million was preceded by its \$900 million blockbuster in 2006 (a "record settlement" at the time); and Wells Fargo was part of the landmark \$25 billion dollar in 2012 before entering into the \$1.2 billion this year!

Regardless, Providers Should Take Notice!

We may wonder about the "meaning" of the recovery of \$4.76 billion in FY 2016, but it would be a mistake to question its significance. It takes a tremendous amount of work and effort to obtain settlements of this magnitude year after year, but DOJ well knows that the accomplishments of this year will soon be forgotten if they are not repeated or advanced. DOJ can and must continue to push, and the message to providers is clear: **Take Notice, Pay Attention to Compliance and Stay Out of Harm's Way!**

This article was written by:

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Too Many Audits Stacking Up?



Let our team help with the backlog & keep you current!

DoctorsManagement & NAMAS employ Senior Management Auditors with no less than 10 years of experience. Our team can perform your audits or offer hands-on assistance to your auditing team.

We are available to assist with:

- Valuation Audits

Hands On: Auditing Inpatient Services

Speaker: Aimee Wilcox

January 24, 2017

2pm EST

NAMAS Members: Watch your Email for Registration Links

Non-Members: Email namas@namas.co to learn how to attend these webinars



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2016 Salary Survey

- Pre-Bill Audits
- Retrospective Audits
- Customized Training

To schedule your audit or training, contact NAMAS at 877-418-5564 or via email at namas@namas.co

WEBINAR

Our 2017 Webinar Schedule is Now Available!

[Click Here to view the schedule](#)

Webinar subjects, dates, and speakers and subject to change without notice.

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Each year, NAMAS collects data from auditors about their employment as auditors.

Please take a few moments to complete our survey. Entering your email address at the end of the survey will enter you into a drawing for a chance to win one

of several prizes:

\$100 Visa Gift Card

\$25 Starbucks Gift Card

and our

GRAND PRIZE

is a scholarship

to attend our 9th Annual

NAMAS Auditing & Compliance Conference!

Click the image above to complete the survey. This survey will close on March 15, 2017 and winners will be selected and contacted by a NAMAS representative.

Complimentary Tip of the Week

Our weekly auditing & compliance tip emails are available to anyone who could benefit from this information.

If you know someone who would like to receive these emails, invite them to sign.

Click the image above to be added to our email list!