

# HOSPITAL OPERATOR AGREES TO PAY \$32M DUE TO MEDICARE OVERPAYMENTS: HERE'S HOW HEALTHCARE COMPANIES CAN CURB FALSE CLAIMS LIABILITY

Insights  
Jun 3, 2026

## Hospital Operator Agrees to Pay \$32M Due to Medicare Overpayments: Here's How Healthcare Companies Can Curb False Claims Liability

The Department of Justice recently ramped up healthcare fraud investigations and prosecutions and shows no intention of slowing down. Indeed, the DOJ's recent settlement with Oglethorpe, Inc. and its top executives offers key lessons for healthcare companies doing business with Medicare and Medicaid. This Insight will cover everything you need to know about the case, four key lessons, and five steps to help protect yourself against civil and criminal liability under the False Claims Act (FCA).

### What Happened?

Oglethorpe is an operator of psychiatric hospitals based in Tampa, Florida. The DOJ alleged that the company – along with its leaders – knowingly failed to return Medicare overpayments identified by the company's consultants. The overpayments were from 2021 through the present, and involved beneficiaries admitted to multiple behavioral hospitals and facilities who allegedly did not qualify for inpatient psychiatric care, according to [the DOJ's May 27 settlement announcement](#).

The company faced liability under the FCA, which is the DOJ's primary tool for recovering funds from companies and individuals alleged to have knowingly submitted false claims

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to the government. But one thing made matters worse for Oglethorpe:

- Back in 2021, Oglethorpe entered into a Corporate Integrity Agreement (CIA) with the Department of Health and Human Services Office of Inspector General (HHS-OIG) following an earlier FCA settlement with the DOJ.
- Now, after allegedly violating their CIA, Oglethorpe and its officers have agreed to enter into a voluntary exclusion agreement with the HHS-OIG.

The settlement agreement **excludes them from Medicare, Medicaid, and all federal healthcare programs for a period of 10 years** beginning in July 2026.

### **Could Your Company Be Liable?**

Now that the Trump Administration established its Task Force to Eliminate Fraud and the National Fraud Enforcement Division, businesses will want to pay close attention to practices that could lead to potential violations of the FCA. These can take many forms in the healthcare industry, including in the following scenarios:

- A healthcare provider may realize that its physicians have been billing for medical services, procedures, or prescriptions that were never provided.
- A lab, pharmaceutical company, or medical device manufacturer may pay a healthcare provider to refer patients to them or to exclusively use their products.
- A provider may be coding for conditions not present in order to obtain care for their patient that they would not otherwise receive based on the conditions actually present.
- A healthcare company may have employed an unlicensed physician.
- Or, as alleged in the Oglethorpe case, a healthcare company may realize that they owe money to the government due to Medicare or Medicaid overpayment, and knowingly conceal the overpayment. This is often referred to as a "reverse false claim."
- **In the specific context of Medicare overpayments or "reverse false claims,"** under the Social Security Act,

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providers are required to **report and return** a self-identified overpayment to their Medicare Administrative Contractor (MAC) within:

- 60 days of identifying the overpayment
- Six years of getting an overpayment, generally known as the “lookback period,” or
- A corresponding cost report due date, if applicable.

**What a company does after discovering any of the above is important, and acting fast is imperative.**

#### **4 Key Lessons on Navigating Settlements and Corporate Integrity Agreements**

**The Oglethorpe settlement serves as a cautionary tale:** If a company enters into a CIA, it faces increased scrutiny from HHS, the DOJ, and other state and federal offices. A company bound by a CIA must strictly comply with the terms of the contract or risk severe penalties. That includes the penalty it attempted to avoid by entering into the CIA in the first place: A long-term exclusion from Medicare, Medicaid, and other federal healthcare programs.

### **1. Investigate Early and Involve Counsel**

A company can decide early on to investigate possible wrongdoing. Getting criminal defense counsel involved at this stage can help you identify known or potential misconduct and assess whether any individuals might need their own separate counsel. Ideally this internal investigation would happen before the government reaches out with a Civil Investigative Demand (CID) or search warrant, but this is not always possible. Working with experienced counsel matters throughout the process to show you investigated in good faith and to protect your interests during settlement negotiations.

### **2. Self-Disclosure and Cooperation Can Significantly Reduce Liability**

Depending on what an investigation uncovers, a company may choose to disclose its findings to the government to show it wants to cooperate. Keep in mind that voluntary self-

disclosure and other forms of cooperation with a government investigation can greatly improve your chances of reducing liability for monetary penalties, which can be steep under the FCA.

In a qui tam action, which is a civil suit brought by a private whistleblower (or “relator”), triple damages are often sought, with a share of the proceeds going to the relator. The government decides early whether to take over the case or decline it, in which case the relator would proceed on their own. In civil settlements, the DOJ will often seek double damages.

Self-disclosure tends to move faster when the company has already done its own internal investigation rather than waiting for a CID or warrant. Voluntary disclosure can also spare the company – along with its officers, directors, owners, and employees – the disruption and cost of a government-directed investigation.

### **3. Note that One Settlement May Not End the Issue**

Alleged FCA violations could be the focus of several agencies, including the HHS-OIG, the Centers for Medicare and Medicaid Services (CMS), the Civil and Criminal Divisions of the DOJ, and state agencies. Settling with one entity doesn’t necessarily prevent another from bringing claims over the same alleged conduct. And while a qui tam action is a civil action, the underlying conduct can still expose the company to separate criminal prosecution by the DOJ. This makes it essential to work with experienced counsel throughout the process.

### **4. Understand Your Agreement**

A healthcare company may choose to enter into a Corporate Integrity Agreement with the HHS, which is a binding five-year contract. Under a CIA, the company agrees to strict compliance obligations and ongoing monitoring in exchange for avoiding exclusion from federal healthcare programs like Medicare and Medicaid. As the Oglethorpe lesson shows, the agreement only holds if the company complies with all its terms.

## **Your 5-Step Action Plan**

### **1. Review your compliance policies and educate your employees on expectations and internal reporting systems**

**when noncompliance is suspected.** Although the decision to self-disclose is fact-specific and difficult, the FCA incentivizes swift disclosures and punishes delays, particularly in the context of Medicare overpayments. Remember: once an overpayment is noted, **the 60-day countdown to report and return it begins.** Even then, it is hard to know if an enforcement agency has already become aware of the overpayment. A CID may come even sooner than 60 days. Speed is key.

**2. When in doubt, consult counsel.** If you are unsure about whether certain conduct constitutes – or may appear to be – an FCA violation, it is best to consult experienced counsel familiar with the nuances of the law and recent enforcement trends. Demonstrating that you have taken steps to identify and remedy misconduct will be crucial if the issue is later scrutinized by the government.

**3. Internal investigations must be thorough and well documented.** The relevant facts and individuals involved may need to be disclosed if the company wishes to obtain credit for self-disclosing to the DOJ. The company will want to show that it engaged in a good-faith effort to uncover any potential misconduct.

**4. Voluntary self-disclosure is an option, and it is better to self-disclose early.** Companies considering self-disclosure will need to assess where to self-report based on a DOJ component, US Attorney's Office or State Attorney General's jurisdiction, HHS-OIG's jurisdiction, or where professional relationships are established.

**5. Once a CIA is in place, take steps to comply.** CIAs tend to be robust and strict, and the cost of noncompliance is high. Exclusions from federal healthcare programs such as Medicare and Medicaid hang in the balance, both before and after the CIA is signed.

## **Conclusion**

For more information and assistance in reviewing your workplace compliance systems and related investigation processes or taking the actions described above, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney on our Corporate Criminal Investigations and White-Collar Defense Group. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.

