

these experiences, I have developed an ability to identify and investigate criminal conduct in the Medicare program.

THD'S SCHEME TO DEFRAUD MEDICARE

3. I have investigated the activities of True Health Diagnostics, LLC ("THD") and its principals, and believe that the company and its principals are engaged in a scheme to defraud federal health care programs.

4. In 2015, THD purchased the assets of another laboratory company called Health Diagnostics Laboratory, Inc. ("HDL"). Prior to the acquisition, HDL had been driven out of business as a result of pervasive healthcare fraud. In addition to purchasing HDL's assets, THD hired many of the individuals associated with HDL's fraudulent conduct. After this acquisition, in an internal Board of Directors meeting on October 15, 2015, True Health noted that it was "Business as usual."

5. Specifically, evidence in the ongoing civil and criminal investigations, which began in 2017, suggests that THD, following its acquisition of HDL and hiring its former employees, engaged (and continues to engage) in criminal activity commonly referred to as: payment of illegal remuneration, money laundering, billing for services not rendered, and billing for medically unnecessary services.

6. By way of example, THD began coordinating with rural hospitals and recruiters to route patient blood samples through rural hospitals because the rural hospitals received a higher reimbursement from Medicare for processing the same lab tests than non-rural hospitals. Ultimately, the scheme comes at the expense of the taxpayer.

7. THD induced physicians to refer laboratory tests in ways that would benefit THD. For instance, THD provided referring physicians' offices an embedded THD-employed

phlebotomist, who would work in the physician's office. This benefited the physician because the THD-employed phlebotomist would provide services ordinarily provided by the physician's staff. Once THD conspired with a rural hospital in order to obtain the higher reimbursement rates, the phlebotomist would become an "employee" of the rural hospital and patient samples would be steered to that rural hospital instead of THD.

8. Based on the investigation, we also understand that THD induced referrals of laboratory testing through the use of shell companies disguised as Management Service Organizations ("MSOs"). Based on evidence gathered, it is my belief that THD, through the direction and counsel of its leadership, conspired with the MSOs to influence physicians to steer patient labs to rural hospitals which were working in concert with THD.

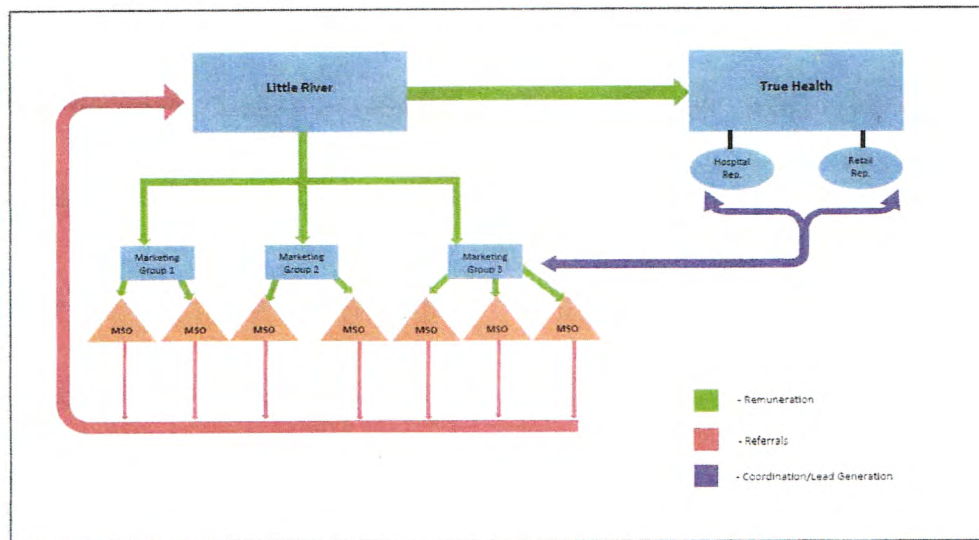
9. In order to induce physicians to order laboratory testing from its chosen rural hospitals, THD coordinated with marketing groups in order to enlist both its existing physician customers and to recruit new physicians into MSOs.

10. The physicians were grouped by referral volume and compensated for referrals sent to hospitals associated with THD. The higher the referral volume, the more revenue the MSO would generate. Apparently, the MSOs had no other source of revenue.

11. The payments were disguised as returns on "investments" in the MSOs. However, the physicians' return on investment was not reasonable and demonstrates the fact that the MSOs were merely a conduit for kickbacks. For instance, one physician invested \$3,000 in a MSO, but was paid \$308,000 as a return on investment within a few of years. This represented a 10,000% return on investment. Given the MSOs' structure, physicians could increase their return on investment by increasing the volume of referrals. The investigation has uncovered millions of dollars in kickbacks that were funneled to incentivize referrals as part of this scheme.

12. As part of the MSO scheme, THD benefited by setting up and running laboratories at the rural hospitals. THD would obtain various management fees and frequently would install its affiliated billing company in the hospitals in order to bill the claims generated by the scheme.

13. The MSO scheme is generally represented by the following diagram:



14. THD was a “partner” to the rural hospitals is name only. Rather, THD exploited the rural hospitals. It is my understanding that at least one rural hospital, Little River Hospital, which is located in a small rural community in Central Texas, entered into bankruptcy after “partnering” with THD. It is my understanding that Little River’s relationship with THD was one factor contributing to its bankruptcy.

15. The civil and criminal investigations have involved a number of interviews of physicians who admit to referring labs to rural hospitals in exchange for receiving financial incentives funneled to them through MSOs.

16. As part of the investigation, the physicians' claims data has been reviewed and that analysis corroborates the overwhelming majority of claims billed to the Medicare program by these rural hospitals stemmed from outpatient laboratory billings. These incentivized physicians further admitted that they never had privileges with these rural hospitals, never visited the rural hospitals, and did not provide their patients a choice as to where to send their labs. In several instances, it appears that physicians, enticed by kickbacks they received through MSOs as "returns on investment," routinely ordered the same lab panel of tests for the patients regardless of their diagnoses or actual needs.

17. Evidence gathered during the course of the investigation suggests that THD's management knew that the arrangements were abusive. For example, in February 2016, one of True Health's Senior Vice Presidents wrote to, among others, True Health's CEO stating that these types of arrangements were "a powder keg waiting to explode on us."

18. By way of further example, in May 2016, the same Senior Vice President wrote to another THD official that law enforcement was asking about MSOs and money paid to referring doctors. In the correspondence, he acknowledged that "the pain for alot [sic] of people is coming soon. . . . I think this is all gonna [sic] make hdl [sic] look like child's play. [P]eople are gonna [sic] go to prison[.]"

THD'S FINANCIAL CONDITIONS

19. I have reviewed the Declaration of Christian Richards that THD offered in support of its Motion for Temporary Restraining Order (the "Richards Declaration").

20. The Richards Declaration alleges that "without the Court's intervention, True Health will be nearly out of cash on or before July 8, 2019." [Richards Decl. ¶ 6.]. The Richards Declaration offers no support for this statement.

21. THD has frequently claimed it would run out of cash or be forced into bankruptcy without assistance from CMS or the Department of Justice. None of THD's claims have proven true.

22. For example, on March 28, 2019, in a letter signed by Christian Richards and counsel for THD and sent a letter to Sara McLean, Assistant Director of the Fraud Section for the Commercial Litigation Branch of the United States Department of Justice, THD represented that Mr. Richards believed that "absent additional funding or the release of the Medicare funds, the company will run out of operating funds in or around the third week of April ... [W]e have serious doubts that additional funding will be forthcoming"

23. This was not the case. The Richards Declaration recognizes that as of July 2, 2019, THD had still not run out of cash. [Richards Decl. ¶ 6.].

24. March 28, 2019, was not the first time THD claimed imminent financial collapse absent relief from the government. Nine months ago, on September 30, 2018, THD's sent a letter to the United States stating, "As you know, True Health and the Department of Justice ("DOJ") have agreed to an expedited 90-day timeline for possible resolution with an end date in mid-November. As previously expressed to DOJ, if that timeline is not met, True Health will no longer have the funding to maintain operations. True Health's financial position has not changed with respect to that date." Contrary to THD's representations, THD continues to operate over eight (8) months beyond the date it represented it would lack funding to continue operations.

25. Over sixteen (16) months ago, on February 20, 2018, counsel for THD represented that "the Company continues to be under great financial strain and does not expect to be able to continue to operate much longer, unless the suspension is lifted and the funds in escrow are returned." THD continued operations for 16 months following this letter.

26. On January 24, 2018, THD's counsel similarly represented that "[T]he company ..., as discussed during last week's meeting, is close to shutting down on the basis of the payment suspension...." This representation notwithstanding, THD is still operating seventeen (17) months later.

27. The Richards Declaration does not offer any support for why THD's current representations are any more accurate than the representations it has made for the last seventeen (17) months.

28. Although the Richards Declaration blames THD's financial condition on the Medicare suspensions, it fails to discuss a "recapitalization" which stripped over \$100 million out of THD.

29. Evidence suggests that THD, after receiving an administrative subpoena and becoming aware of a civil investigation, engaged in a scheme to transfer its assets, thereby becoming insolvent, and reducing the United States' ability to recover any judgement against it. In late 2016, Medicare investigators visited THD headquarters, requested documents, placed several THD referring physicians of prepayment review, and began a billing audit. In January 2017, under the guise of a "recapitalization," THD took on approximately \$110 million in debt while simultaneously turning around to pay its executives and shareholders approximately \$130 million in distributions. This included a distribution of approximately \$36 million to THD's CEO, Chris Grottenthaler. Other THD executives, including its CFO, Christian Richards, received millions of dollars. The United States is currently investigating the propriety of this "recapitalization."

THE 2017 AND 2019 PAYMENT SUSPENSIONS

30. I am familiar with suspensions instituted by the Center for Medicare and Medicaid Services (“CMS”) in 2017 and 2019. The conduct giving rise to the suspensions is different. In May 25, 2017, CMS notified THD of its decision to suspend THD’s Medicare payments due to credible allegations of fraud. CMS provided THD with a non-exhaustive list of eight fraudulent claims identified by “from date of service,” “to date of service,” and “claim control number.” Each listed claim was serviced in either 2015 or 2016. On June 23, 2017, CMS reduced THD’s Medicare suspension percentage from 100% to 35%.

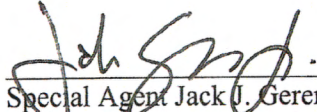
31. But THD continued its fraud scheme. Even after a partial lifting of THD’s Medicare suspension, THD submitted over 4,000 new fraudulent claims. CMS identified five of these claims in its June 13, 2019 notice of suspension by “claim control number,” “date of service,” and “amount paid.” Each was submitted in 2017. Given these new fraudulent submissions, CMS implemented a 100% Medicare payment suspension and outlined a process for challenging the new suspension. On June 25, 2019, THD submitted a rebuttal statement to the suspension; but before CMS could respond, THD filed its request for temporary restraining order.

32. The suspensions, including the 100% suspension imposed in 2019, are necessary to protect the integrity of the Medicare program. Further, termination of the suspension would jeopardize the outcomes of ongoing investigations.

[Signature Page Follows]

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 5, 2019.

A handwritten signature in black ink, appearing to read "Jack J. Geren, Jr.", written over a horizontal line.

Special Agent Jack J. Geren, Jr.
United States Department of Health and Human Services
Office of Inspector General
Office of Investigations