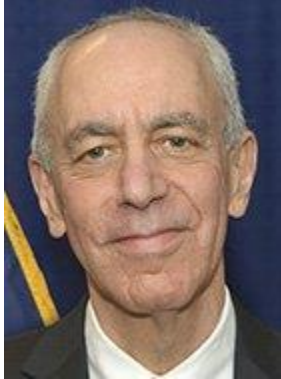


Levin starts unit to stem health fraud



Joel R. Levin

By [Patricia Manson](#)

Law Bulletin staff writer

Chicago's top federal prosecutor has established a new unit in his office to battle health-care fraud.

Acting U.S. Attorney Joel R. Levin said Tuesday the unit will "bring even greater focus, efficiency and impact to our efforts in this important area."

The unit will prosecute defendants accused of offenses that include submitting fraudulent bills, falsifying diagnoses to justify expensive tests and performing procedures that are not medically necessary.

"Every year, health care fraud causes millions of dollars in losses to Medicare and private insurers," Levin said in a statement. "Health care fraud also often exploits patients through unnecessary or unsafe medical procedures.

"Health care providers who cheat the system must be held accountable."

Assistant U.S. Attorney Heather Kirsten McShain will lead the five-member unit, while Assistant U.S. Attorney Stephen C. Lee will serve as its senior counsel. The unit will operate within the criminal division of the U.S. Attorney's Office for the Northern District of Illinois.

Levin announced the establishment of the unit less than a week after his office took part in the largest health-care fraud enforcement action in the U.S. Justice Department's history.

More than 400 defendants in 41 districts across the country were charged in various schemes that involved about \$1.3 billion in false billings.

Two doctors and several other medical professionals were charged in Northern Illinois.

Nancy DePodesta, a former federal prosecutor now with Arnstein & Lehr LLP, said establishing a unit dedicated to prosecuting alleged health-care fraud will benefit both prosecutors and potential defendants.

Prosecutors who know how the health-care system works are better able to distinguish between honest mistakes and criminal activity, DePodesta said.

DePodesta served as an assistant U.S. attorney in Northern Illinois and as legal counsel for the Illinois Department of Corrections before she went into private practice. Her practice has included counseling home health-care agencies in investigations into alleged violations of the False Claims Act and representing a physician before regulatory bodies in matters concerning the prescription of opioids.

DePodesta said the creation of the health-care fraud unit in Chicago “shows the prosecution of health-care cases remains a priority for the U.S. Justice Department.”

“I think it’s going to certainly increase efficiency and bring with it an expertise in this area,” she said. “These are seasoned prosecutors who know how to work and prosecute these cases.”

Another former prosecutor, Mark J. Silberman of Benesch Friedlander Coplan & Aronoff LLP, said McShain and Lee are good choices to take leading roles in the unit.

“I think the most valuable aspect that both have and bring is that they’re willing to look past what they can do to what they should do,” Silberman said.

“That is a key to someone whose goal is to get justice, not just a conviction.”

Before going into private practice, Silberman served as the chief of drug prosecutions for the Sangamon County State’s Attorney’s Office in Springfield and as a special assistant U.S. attorney in the Central District of Illinois. He also served as general counsel to the Illinois Certificate of Need Board and as a deputy chief counsel for the Illinois Department of Public Health.

While he has no criticisms of McShain and Lee, Silberman said he’s not entirely happy with the way the federal government approaches allegations of fraud.

Many of those cases involve accusations that a health-care provider received overpayments from Medicaid, Medicare or other government programs, Silberman said.

He said the government tends to assume that one or two overpayments are a mistake, while many overpayments are evidence of an intent to defraud.

But an honest mistake in a provider’s billing system — for example, using the wrong code for a particular procedure — can lead to multiple overpayments, Silberman said.

He said having prosecutors who understand the intricacies of the health-care system serve in a unit that focuses on health-care fraud should help prevent prosecutions that should not be brought.

“Hopefully, it will yield the ability to distinguish between what warrants action and what doesn’t,” Silberman said.