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Musk, DOGE Claim They'll Stop Health Care Fraud in Medicare and Medicaid

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But Trump's been allowing the CMS scammers to walk free, according to this new KFF Health News investigation.

By Brett Kelman

Five years ago, the CEO of one of the largest pain clinic companies in the Southeast was sentenced to more than three years in prison after being convicted in a $4 million illegal kickback scheme.

But after just four months behind bars, John Estin Davis walked free. President Donald Trump commuted Davis' sentence in the last days of his first term. In a statement explaining the decision, the White House said that "no one suffered financially" from Davis' crime.

In court, however, the Trump administration was saying something very different. As the president let him go, the Department of Justice alleged in a civil lawsuit that Davis and his company defrauded taxpayers out of tens of millions of dollars with excessive urine drug testing. The DOJ alleged that Comprehensive Pain Specialists made such a "staggering" sum from cups of pee that employees had given the testing a profit-minded nickname: "liquid gold."

Davis and the company denied all allegations in court filings and settled the DOJ's fraud lawsuit without any determination of liability. Davis declined to comment for this article.

Since returning to the White House, Trump has said he will target fraud in Medicare, Medicaid and Social Security, and his Republican allies in Congress have made combating fraud a key argument in their plans to slash spending on Medicaid, which provides health care for millions of low-income and disabled Americans. During an address to Congress last

month, Trump said his administration had found "hundreds of billions of dollars of fraud" without citing any specific examples of fraud.

"Taken back a lot of that money," Trump said. "We got it just in time."

But Trump's history of showing leniency to convicted fraudsters contrasts with his present-day crackdown. In his first and second terms, Trump has granted pardons or commutations to at least 68 people convicted of fraud crimes or of interfering with fraud investigations, according to a KFF Health News review of court and clemency records, DOJ press releases, and news reports. At least 13 of those fraudsters were convicted in cases involving more than $1.6 billion of fraudulent claims filed with Medicare and Medicaid, according to the Department of Justice.

And as one of the first actions of his second term, Trump fired 17 independent inspectors general responsible for rooting out fraud and waste in government.

"It sends a really bad message and really hurts DOJ efforts at creating deterrence," said Jacob Elberg, a former assistant U.S. attorney and law professor at Seton Hall University in New Jersey. "In order to reduce health care fraud, you need people both to be afraid of getting in trouble, but also for people to believe in the legitimacy of the system."

Elberg said considerable fraud in Medicare and Medicaid exists largely because the programs' "pay-and-chase models" prioritize paying for patient care first and tracking down stolen dollars second. To prevent more fraud, the programs would likely need to be redesigned in ways that would be slower and more cumbersome for all patients, Elberg said.

Regardless, Elberg said the president's claimed focus on fraud appears to be a pretext for slashing spending that has been legally appropriated by Congress. Trump has empowered the Elon Musk-led Department of Government Efficiency, which he established and named by executive order, to make deep cuts in federal budgets, halting some medical research and aid programs in addition to cutting spending on climate change, transgender health and diversity, equity and inclusion programs.

"What's been the focal point to date of the administration is not what anybody has ever referred to as health care fraud," Elberg said. "There is a real blurring — a seemingly intentional blurring — between what is actually fraud and what is just spending that they are not in favor of."

Jerry Martin, who served as a U.S. attorney for the Middle District of Tennessee under President Barack Obama and now represents health care fraud whistleblowers, also said Trump's focus on fraud appeared to be "just a platform to attack things that they don't

agree with” rather than “a genuine desire to root out and combat fraud.”

Even so, Martin said some of his whistleblower clients have been emboldened.

“I’ve had clients repeat back to me ‘President Trump says fraud is a priority,’” Martin said. “People are listening to it. But I don’t know that what he’s saying translates into what they believe.”

The White House did not respond to requests for comment for this article.

A Billion-Dollar Fraud Case and Needless Eye Injections

Presidents enjoy the unique authority to erase federal convictions and prison sentences with pardons and commutations. In theory, the power is intended to be a final bulwark against injustice or overly harsh punishment. But many presidents have been accused of using the pardon power to reward powerful allies and close associates as they leave the White House.

Trump issued about 190 pardons and commutations in the final two months of his first term, including for some health care fraudsters convicted of schemes with astonishing costs.

For example, Trump granted a commutation to Philip Esformes, a Florida health care executive convicted in 2019 of a $1.3 billion Medicare and Medicaid fraud scheme. After he was sentenced, DOJ announced in a press release that “the man behind one of the biggest health care frauds in history will be spending 20 years in prison.” Trump freed him 14 months later.

Trump also granted a commutation to Salomon Melgen, a Florida eye doctor who was serving a 17-year prison sentence for defrauding Medicare of $42 million. Melgen falsely diagnosed patients with eye diseases, then gave them unnecessary care, including laser treatments and painful eye injections, according to DOJ and court documents.

“Salomon Melgen callously took advantage of patients who came to him fearing blindness,” said a DOJ news release after Melgen was sentenced in 2018. “They received medically unreasonable and unnecessary tests and procedures that victimized his patients and the American taxpayer.”

DOJ: $70 Million Spent on ‘Excessive’ Urine Testing

Despite the flurry of pardons and commutations at the end of Trump’s first term, the leniency he showed Davis was unique. Davis was the only convicted health care fraudster

to receive clemency while the Trump administration was simultaneously accusing him of more fraud.

As CEO of Comprehensive Pain Specialists from 2011 to 2017, Davis oversaw a rapid expansion to more than 60 locations across 12 states, according to federal court documents.

He was indicted in 2018 for using his CEO position to refer Medicare patients in need of medical equipment to a conspirator in return for kickbacks paid through a shell company, according to court documents. He was convicted at trial in April 2019 of defrauding Medicare.

Three months later, the DOJ filed a fraud lawsuit against Davis and CPS that piggybacked on the claims of seven whistleblowers. The lawsuit alleged that CPS collected more than $70 million from federal insurance programs for urine drug testing, most of which was “excessive,” and that an audit of a sampling of the tests had found at least 93% “lacked medical necessity.”

Typically, government insurance programs pay for urine testing so pain clinics can verify that patients are taking their prescriptions properly and not abusing any other drugs, which could contribute to an overdose. Patients could be tested as little as once a year or as often as monthly depending on their level of risk, according to the DOJ lawsuit.

But Comprehensive Pain Specialists performed “myriad urine drug testing on virtually every CPS patient on virtually every visit” then conducted “at least 16 different types of tests” on each sample, and sometimes as many as 51, according to the lawsuit.

Trump commuted Davis’ sentence for his criminal conviction in January 2021 as the DOJ was finalizing a settlement in the civil lawsuit. The commutation was supported by country music star Luke Bryan, according to a White House statement.

Months later, with President Joe Biden in office, CPS and its owners agreed to repay $4.1 million — less than 10% of the damages sought in the suit — and the case was closed.

In the settlement, Davis agreed not to take any job where he would ever again bill Medicare or other federal healthcare programs. He was not required to personally repay anything.

Martin, who represented one of the whistleblowers who first raised allegations against Davis and CPS, said the leniency that Trump showed to him and other health care fraudsters may discourage DOJ employees from pursuing similar investigations during his second term.

“There are a lot of rank-and-file people who are operating at the lowest point in their professional careers, where they’ve seen a lot of their work essentially be water under the bridge,” Martin said. “That’s got to be really demoralizing.”

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