DOJ'S 2019 FALSE CLAIMS ACT RECOVERIES TOTAL MORE THAN $3 BILLION

On January 9, 2020, the Department of Justice ("DOJ") announced that it collected over $3 billion in settlements and judgments under the False Claims Act ("FCA") in the federal fiscal year 2019. The FCA has historically been the government's primary tool for combatting perceived fraud, waste and abuse in the health care system, and 2019 was no different. Health care cases accounted for $2.6 billion—nearly 90 percent of total recoveries. This is the tenth consecutive year that the DOJ's FCA health care recoveries exceeded $2 billion. The DOJ and whistleblowers brought these cases against a variety of health care providers and suppliers including drug and medical device manufacturers, managed care providers, hospitals, pharmacies, hospice organizations, laboratories and physicians.

The largest health care settlements involved pharmaceutical companies. In one case, a drug manufacturer paid $195 million to settle civil allegations that it paid kickbacks to induce physicians and nurse practitioners to prescribe its drug to patients. The government alleged that the company paid kickbacks in the form of sham speaker arrangements, providing lavish meals and entertainment and setting up jobs for prescribers' friends and relatives. In another case, the government received $500 million from the maker of an opioid addiction treatment. The payment resolved civil allegations that the maker promoted its drug inappropriately, including by making false or misleading claims that one formulation of the drug was less susceptible to diversion, abuse and pediatric exposure than other similar drugs. The DOJ also settled with seven drug manufacturers who paid a combined total of $624 million to resolve claims that they paid copays for Medicare and Medicaid patients through purportedly independent foundations.

The DOJ settled a large number of claims against health care providers, including physician clinics, nursing facilities, hospitals and health systems. In several of these settlements, the DOJ pursued individuals as well as corporations. In one case, owners of a group of companies that operates orthopedic clinics entered into individual settlements which, when combined with the corporate settlement, totaled $7.1 million. The companies and their owners further agreed to a five-year corporate integrity agreement that requires them to undertake extensive compliance efforts.

Whistleblower cases continued to be a major factor in the DOJ's enforcement efforts. 633 new *qui tam* claims were filed in 2019, and the DOJ recovered more than $2.1 billion from those and existing whistleblower actions.

PRACTICAL TAKEAWAYS

Health care enforcement continues to be a profitable pursuit for the federal government. From 2016 through 2018 (the most recent period for which data is available), the Office of Inspector General reports that it collected $4.00 for every $1.00 spent on enforcement efforts.

In this environment, developing and implementing an effective compliance program has become a standard expectation within the health care industry. While even the best program cannot prevent all violations, a tailored, proactive compliance program is more likely to identify issues early. Additionally, the existence of such a program is a positive factor when negotiating with the government, should that become necessary. Finally, if any significant compliance issues are detected through your own compliance program activities, self-reporting is usually a much-preferred position as opposed to being a target in another one of these government enforcement actions.

Hall Render attorneys have years of experience in providing practical advice to all types of health care entities. For help understanding your legal obligations, designing a compliance program that is right for your organization or investigating a potential issue, please contact:

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