

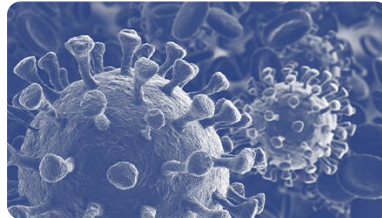
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Publications



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DOJ Intensifies Criminal Prosecutions of Health Care Fraud Related to COVID-19



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The Department of Justice (DOJ) has intensified its already aggressive crackdown on fraud related to COVID-19, recently announcing criminal charges against a telemedicine company executive, a physician, marketers and medical business owners for losses exceeding \$143 million. These recent prosecutions provide a clear warning to all health care-related businesses that there will be enhanced scrutiny of the use of government funds related to the COVID-19 pandemic.

The CARES Act

The Coronavirus Aid, Relief, and Economic Security (CARES) Act, enacted in March 2020, was intended to provide emergency financial assistance to those suffering economic losses related to COVID-19. It included \$2.2 trillion in economic aid for Americans and their businesses. The law provided forgivable loans to small businesses to cover payroll and other specified expenses through the Paycheck Protection Program (PPP), and included the Provider Relief Fund, which was designed to provide needed medical care to Americans suffering from COVID-19.

The CARES Act also provided an opportunity for service providers to take advantage of COVID-19-related government assistance. Immediately after the CARES Act was passed in March 2020, the DOJ began efforts to investigate and prosecute pandemic-related fraud.

COVID-19 Related Health Care Fraud Crackdown

On May 26, 2021, more than a year after the CARES Act was enacted, the DOJ announced criminal charges against 14 defendants — 11 newly-charged and three who were charged in superseding indictments — in seven federal district courts for their alleged participation in health care fraud schemes that resulted in over \$143 million in false billings.

Deputy Attorney General Lisa O. Monaco described the alleged conduct as “theft from American taxpayers through the exploitation of the national emergency,” and that those charged “took advantage of the COVID-19 pandemic to line their own pockets instead of providing needed health care services during this unprecedented time in our country.” Monaco emphasized the government’s commitment to prosecuting bad actors and holding them accountable for exploiting government programs that were designed to help the American people.

As the DOJ announced the prosecutions, the Center for Program Integrity, Centers for Medicare & Medicaid Services (CPI/CMS)

separately announced that it took adverse administrative actions against over 50 medical providers. The providers allegedly abused CMS programs that were designed to encourage access to medical care during the pandemic.

COVID-19 Health Care Crimes

The defendants are alleged to have committed various COVID-19 health care-related crimes, including but not limited to:

- Offering COVID-19 tests to induce victims to provide their personal identifying information and thereafter misusing the victims' information to submit claims to Medicare for unrelated medical tests
- Submitting false claims to Medicare for sham telemedicine encounters
- Offering and paying bribes in exchange for medical professionals' referrals of medically unnecessary testing
- Submitting false claims to Medicare for allergy and COVID-19 testing that did not occur
- Misappropriating funds from the CARES Act Provider Relief Fund and submitting false loan applications and false loan agreements to the Economic Injury Disaster Loan Program
- Obtaining billing privileges for multiple pharmacies by using nominees to serve as the purported owners and supervising pharmacists and then allegedly submitting false and fraudulent claims to Medicare

Deputy Inspector General for Investigations Gary L. Cantrell of Health and Human Services – Office of Inspector General (HHS-OIG) stated that his “agency and its law enforcement partners are aggressively and effectively investigating these egregious crimes, which is made equally clear given the results of this takedown. We will continue to support the unprecedented COVID-19 public health effort by holding accountable people who use deceptive tactics to profit from the pandemic.”

FBI Director Christopher Wray similarly stated that the “FBI, along with our federal law enforcement and private sector partners, are committed to continuing to combat health care fraud and protect the American people.”

Currently, the DOJ Fraud Section is prosecuting cases in the following districts: Western District of Arkansas, Northern District of California, Middle District of Louisiana, Central District of California, Southern District of Florida, District of New Jersey, and the Eastern District of New York. The National Rapid Response Strike Force of the Health Care Fraud Unit of the Criminal Division’s Fraud Section, in conjunction with the Health Care Fraud Unit’s Medicare Fraud Strike Forces (MFSF) led the enforcement actions. The DOJ also had the assistance of the FBI, HHS-OIG, U.S. Postal Inspection Service, Internal Revenue Service Criminal Investigation, Veterans Affairs Office of Inspector General, Department of Defense Office of Inspector General, Federal Deposit Insurance Corporation, Louisiana Medicaid Fraud Control Unit, and other federal and state law enforcement agencies in bringing these charges.

What to Expect Next

The aggressive crackdown on health care fraud related to the COVID-19 pandemic is consistent with the government’s focus on rapidly investigating and prosecuting COVID-19 related fraud, as discussed in our previous alerts [“Justice Department Continues Historic Level of Enforcement Against COVID-19 Fraud”](#) and [“DOJ Announces First Criminal Prosecution for Misuse of COVID-19 Relief Funds Dedicated to Health Care Providers.”](#) Federal authorities have continued to receive an outpouring of complaints related to suspected fraudulent activity from whistleblowers. The government makes reporting alleged fraud easy for the public by having a hotline dedicated to pandemic-related fraud as well as an accessible online complaint form. There will likely be a steady increase in prosecutions.

Any health care business owner who is concerned about compliance with the CARES Act or about potential exposure to COVID-19 related

fraud allegations should immediately consult counsel and not wait to be contacted by law enforcement. Those who have already received a subpoena or inquiry from any law enforcement agency should immediately consult with counsel who can assess the full potential for civil and criminal exposure before responding.

For up to date information on prosecutors' efforts in combating COVID-19 related fraud, consult Fox Rothschild's proprietary [PPP Fraud Prosecution Tracker](#), an interactive tool that monitors new case filings and the disposition of cases surrounding alleged fraud and abuse in connection with PPP nationwide.

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