Thursday, December 3, 2020

The coronavirus pandemic continues to have a devastating impact on individuals, businesses, and society as a whole. Numerous individuals are unable to work, businesses have been forced to close, and the death count continues to rise in America. This has resulted in an immediate and drastic need for medical supplies and goods, especially personal protective equipment ("PPE").

With this increased demand for PPE comes an increase in federal scrutiny. The federal government and federal agencies are taking aggressive measures to combat PPE-related fraud. On April 2, 2020, the Department of Justice ("DOJ") noted that if companies are accumulating critical medical equipment with the intention of selling it and making a profit, those companies are going to be investigated and held accountable. President Donald Trump issued an Executive Order under Section 102 of the Defense Production Act that prohibits the hoarding of medical items. While individuals should be wary of COVID-19-related frauds regarding PPE, it is imperative that companies and individuals under investigation for allegedly engaging in PPE fraud get legal assistance as soon as possible.
What is PPE Fraud?

PPE fraud covers a broad range of conduct. It typically involves the selling of counterfeit or faulty testing kits, cleaning products, gloves, surgical gowns, or facial masks by making false or misleading statements about the effectiveness of the product. It could also involve making false statements to the government in order to secure PPE government contracts.

With respect to the COVID-19 pandemic, the FBI warns that PPE fraud generally comes in two forms: testing schemes and treatment schemes. Testing schemes occur when the scammer contacts you either by phone, email, or sometimes in person and tells you they work for the government and that you need to take a COVID-19 test. The objective during this scheme is to obtain the individual's health insurance information and then bill federal or private health insurance programs/plans. Treatment schemes occur when the scammer preys on public fear by selling fake cures and treatments for COVID-19. Individuals who believe this scheme will deliver either their money or financial information to the scammer.

What Are Examples of PPE Fraud?

As explained by the senior PPE defense attorneys at Oberheiden, P.C., PPE fraud can be perpetrated in many ways, including the following situations:

- Making fraudulent offers to sell medical devices or respiratory masks that are never intended to be delivered;
- Inflating the prices of the medical equipment or medical goods sold well above normal market prices;
- Delivering products that are of a different or lesser quality than that advertised;
- Delivering masks or other medical equipment that do not function or do not provide the protection assured in the advertising;
- Promising to supply medical equipment or goods that the sellers do not have in order to capitalize on societal fear and make a profit at the expense of the emotional public sentiment;
- Advertising that their products will prevent, treat, diagnose, or cure COVID-19 and COVID-19-related symptoms.

What Are the Red Flags of PPE Fraud?

The FBI has indicated that there are several warning signs or red flags which are indicative of PPE-related frauds. Some of these warning signs include the following:

- The supplier makes last-minute changes in price.
- The supplier or seller demands unusual payment terms such as full payment up-front.
The seller requests that the buyer wire funds before shipment and send the seller proof of payment.

The buyer is unable to verify that the seller is a legitimate vendor either with the manufacturer, on the Internet, through the supply chain, or by other means.

The seller does not communicate with the buyer by returning telephone calls or emails.

The buyer is unable to verify the legitimacy of the seller’s contact information or basic business details (e.g., telephone number, email address, business products).

The seller is unable to answer simple questions such as how they seem to have so much supply of a medical device, equipment, or good that is generally in short supply.

The buyer receives multiple excuses for the delay in shipping such as the equipment is stuck in customs or is seized.

Individuals and companies in the healthcare industry should exercise due diligence and extreme caution when doing business with new brokers, different vendors, or third-party brokers in the supply chain.

**How to Respond If You are Under Investigation for PPE Fraud**

A federal investigation for PPE fraud can lead to severe civil and criminal penalties and imprisonment. If you are under investigation or have received a subpoena in connection with allegations of PPE fraud, misconduct, or other impropriety, there are important steps that you can take.

The first step is to hire a defense attorney that is experienced in handling cases involving PPE fraud and healthcare fraud. An attorney can navigate the investigative and litigation process on your behalf and craft arguments to give you the best chance at success. After you have hired a law firm, begin gathering documents to hand over to your attorney to start preparing your defense. Never destroy evidence, as this will have a negative outcome on your case.

Do not be afraid to ask questions regarding the course of the government’s investigation. It is your reputation and business at stake, so it is critical that you remain up-to-date and informed on every step of both the government’s investigation and your attorney’s defense approach.

Lastly, do not proceed on your own. Allegations of PPE fraud can result in significant penalties including fines, loss of license, impaired business relationships, loss of customer base, reputational harm, and can also result in jail time. The sooner you hire an attorney to begin preparing your personalized defense strategy, the better chance you have to substantially reduce these negative consequences of PPE fraud.

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