DOJ Fraud Recoveries 2017 – Health Care Continues to Be the Focus

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On December 21, the Department of Justice ("DOJ") reported its fraud recoveries for Fiscal Year 2017. While overall numbers were significant – $3.7 billion in settlements and judgments from civil cases involving allegations of fraud and false claims against the government – this was an approximate $1 billion drop from FY 2016. However, the statistics released by DOJ reflect themes significant to the healthcare industry.

Greatest Recoveries Come From The Healthcare Industry

As in years past, matters involving allegations of healthcare fraud were the driver, accounting for more than 66% of all fraud related recoveries in FY 2017. While the $2.47 billion was effectively constant from FY 2016, this was the fourth largest recovery in the past 30 years. It is also the fifth consecutive year that healthcare fraud recoveries exceed $2 billion. Largest recoveries came from settlements involving the drug and medical device sector.

Qui Tam Cases Lead Recoveries – and Healthcare Cases Dominate

Cases pursued under the False Claims Act’s qui tam provisions continue to drive matters pursued against healthcare entities. Of the 544 new matters brought in FY 2017, 491 were initiated by relators, down just slightly from 2016 but, nevertheless, the third largest annual filing since DOJ began keeping records in 1986.

Government intervention in these cases continues to generate the lion’s share of the recoveries. Of the $2.47 billion recovered in healthcare matters, $2.06 billion was generated from cases where the government intervened. While by contrast cases in which the government declined to intervene generated $380 million, this was the second highest annual recovery from such cases in 30 years. Thus, while government intervention continues to be a significant concern, the reality is that more cases are being pursued by relators post declination, creating additional risk for healthcare entities.

DOJ statistics also confirm the significant financial incentives for relators to pursue these cases. In FY 2017, the government paid more than $392 million in relator share awards; more than $283 million of these payments came in connection with healthcare cases. Since 1987, almost $5 billion has been paid to relators. These numbers suggest that the potential of a major financial reward is real and will continue to encourage the filing and pursuit of actions, particularly against those in the healthcare industry.

Individual Accountability Remains A Priority...Particularly in Healthcare

Finally, the report reflects the Department’s continued focus on individual accountability. Recoveries included individuals agreeing to hold themselves jointly and severally responsible for multimillion dollar settlements with the government, as well as individual settlements following, and separate and apart from, corporate resolutions.
Significantly, every case cited in DOJ’s press release on the issue of individual accountability was from the healthcare sector. This suggests that those employed in the healthcare industry remain key targets of both the government and *qui tam* relators.

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The FY 2017 DOJ statistics reflect that a change in Administration has done little to alter the government’s belief that devoting time and resources to FCA cases makes “good business sense.” Health care entities—and, as important, individuals in the healthcare industry—need to be mindful of this focus, the potential for violations and to ensure the existence of strong compliance functions to deal with compliance-related matters in a way that is intended to prevent claims and litigation, and to serve as strong defenses when matters are pursued.

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