



## ALERTS

### **Compliance, Cooperation, And Self-Disclosure: DOJ And HHS-OIG Discuss Expectations, Enforcement In Healthcare Fraud Investigations**

October 5, 2023

#### Highlights

Representatives from the Department of Justice and Department of Health and Human Services Office of the Inspector General recently reiterated that robust compliance program implementation is key

Voluntary self-disclosure and cooperation credit will continue to be considered in enforcement actions, with transparency in the resulting reductions

Government inter-agency cooperation allows for broader and faster data sharing during the investigative process

The American Health Law Association's Fraud and Compliance Forum recently hosted a panel discussion with high-level representatives of the Department of Justice (DOJ) Civil and Criminal Fraud Sections and the Department of Health and Human Services Office of the Inspector General (HHS-OIG) to discuss the government's current healthcare

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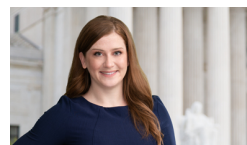
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enforcement priorities.

The panel also shed light on the DOJ's new voluntary self-disclosure protocol announced earlier [this year](#) and cooperation expectations in healthcare fraud investigations.

## **COVID-19 Remains a Priority, Cyber Fraud in Healthcare Emerges as an Enforcement Priority**

The panelists emphasized that certain enforcement trends remain priorities for both the DOJ and HHS-OIG, including opioid fraud, fraud related to Medicare Advantage and managed care plans, and hospice care. The DOJ is also concentrating its efforts on its COVID-19 Fraud Enforcement Task Force and Civil Cyber Fraud Initiative. The panelists warned that the DOJ and HHS-OIG are increasing coordination with other agencies and law enforcement partners to share information and more efficiently investigate healthcare fraud.

They noted that the government's improved data analytics capabilities permit enforcement agencies to engage in what is essentially a real-time analysis of data, which allows for faster and broader investigations.

The panelists stressed that, although the public health emergency has ended, investigation of COVID-19 related fraud will continue. For example, earlier this year the DOJ announced criminal charges against 53 defendants for pandemic-related healthcare fraud. The panelists remarked that a new wave of enforcement against COVID-19 adjacent fraud has started, which includes the billing of additional lab tests for patients receiving COVID-19 testing, when the additional tests were not ordered, medically unnecessary, or never administered.

The panelists called attention to the DOJ's Civil Cyber Fraud Initiative, which among other tools, will continue to use the False Claims Act (FCA) to investigate cyber fraud in the healthcare industry, including the provision of deficient cybersecurity products or services, and other cybersecurity obligations. The panelists highlighted potential issues with the use of AI in storing or managing healthcare data.

## **Cooperation Is Key and Can Substantially Benefit Corporate Entities**

The panel discussed the DOJ's updated guidance on corporate criminal enforcement policies and compliance programs – emphasizing that timely and voluntary self-disclosure of potential fraud and cooperation in government investigations remains more important than ever. Self-disclosure and/or cooperation can result in reduced liability, favorable settlement terms, including the entity not being publicly named, and declination of criminal prosecution in appropriate cases.

Unsurprisingly, the panelists noted that a robust corporate compliance program is a critical and necessary component to detect potential fraud, and corporations are expected to maintain a compliance program, conduct their own internal investigations to enable self-disclosure, and remediate potential violations. The panelists urged entities and their counsel to review DOJ press releases and settlement agreements to understand what forms of cooperation are acceptable, and provided that

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the government intends to remain consistent and transparent in its treatment of corporate civil and criminal healthcare fraud investigations.

## **Key Takeaways for Compliance Personnel and Legal Counsel**

Acknowledging the need for a business case for such enforcement programs, the panelists recommended that compliance personnel and counsel share the value proposition for compliance programs with companies and clients. This includes, but is not limited to, the potential for reduced fines, settlements, restitution, or criminal penalties when fraud occurs.

The panelists also emphasized that a robust compliance program will help improve patient care and ensure funds are spent appropriately on patients and those receiving medical care. Companies should focus on integrity, trust, and being good corporate citizens, not perfection, the panelists said. Voluntary self-disclosure, cooperation, and remediation are expected and will be taken into account by the government in determining a resolution.

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