

ENFORCEMENT UPDATE FOR THE HEALTHCARE INDUSTRY



35th Annual Health Law Conference
April 18-19, 2024

James Gillingham
U.S. Attorney's Office for the Eastern District of Texas

Wilson G. Jones
Bracewell LLP

B. Scott McBride
Morgan, Lewis & Bockius LLP

1

Enforcement Environment

- False Claims Act
- Civil Monetary Penalties
- Data Analytics
- Interagency Cooperation
- Parallel Investigations
- Individual Accountability
- Overpayment Liability
- Department of Justice
- Office of Inspector General
- Office for Civil Rights
- State Attorney General
- State Office of Inspector General
- Commercial Payors
- Whistleblowers

2

2

The False Claims Act

- The False Claims Act continues to be a primary tool for enforcement in the healthcare industry.
 - Majority of FCA claims involve healthcare providers and entities.
 - \$1.8 million in 2023 settlements and judgments related to the health care industry.
- \$2.68 billion in total FCA recoveries for 2023. The government and whistleblowers were party to 543 settlements and judgments – the highest number in a single year.
- Record-breaking 1,212 new FCA cases were filed in 2023.
- The DOJ Civil Fraud section issued 1,504 Civil Investigative Demands related to potential FCA misconduct.

3

3

The Role of FCA Whistleblowers

- DOJ conveyed its focused on self-initiated enforcement actions, but *qui tam* action numbers still remain strong.
 - DOJ initiated 500 matters, the most for any recorded year.
- 712 new *qui tam* actions were filed in 2023 – the third highest in history.
 - This averages to thirteen cases filed every week.
- *Qui tam* settlements and judgments still accounted for the majority of recoveries in 2023.
 - More than \$2.3 billion awarded in *qui tam* settlements and judgments.
 - Relators received more than \$349 million in relator-share payments. This included \$82 million in cases where the government declined to intervene.

4

4

The False Claims Act – Looking to 2024

Expected FCA priorities include:

1. Cybersecurity and the DOJ's Civil Cyber-Fraud Initiative.
2. Private equity firms entering the health care space without full recognition of the regulatory scheme.
3. Continued investigations into PPP and other pandemic loan fraud.



5

5

Cybersecurity Fraud Initiative

In October 2021, the DOJ announced a Civil Cyber-Fraud Initiative.

- Initiative is dedicated to using the FCA to promote cybersecurity compliance.
- "For too long, companies have chosen silence under the mistaken belief that it is less risky to hide a breach than to bring it forward and to report it," said Deputy Attorney General Monaco.
- "Well, that changes today. We are announcing today that we will use our civil enforcement tools to pursue companies, those who are government contractors who receive federal funds, when they fail to follow required cybersecurity standards."
- In March 2023, **Jelly Bean Communications Design LLC** and its manager paid \$293,771 to resolve allegations they failed to secure personal information on a federally-funded children's health insurance website in Florida.

6

6

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: Enforcement Trends Across the Healthcare Industry

First appeared as part of the conference materials for the
35th Annual Health Law Conference session
"Enforcement Trends Across the Healthcare Industry"