

DOJ Recoveries for False Claims Act Cases Fall in 2020

On January 14, 2021, the *U.S. Department of Justice* (DOJ) announced their recovery of \$2.2 billion in settlements and judgments from civil cases involving fraud and false claims for *fiscal year* (FY) 2020.¹ Approximately \$1.8 billion was recouped from the healthcare industry for federal losses alone, and included recoveries from drug and medical device manufacturers, managed care providers, hospitals, pharmacies, hospice organizations, laboratories, and physicians.² This figure is significantly lower than healthcare-related recoveries during FY 2019, which totaled \$2.6 billion.³ Settlements received from the healthcare industry (nearly 82% of the total recovery amount) far outstripped recoveries from defense, energy, construction, and other industries.⁴ In addition to the \$1.8 billion recovered for federal losses, the DOJ also recovered tens of millions of dollars for state and Medicaid programs in FY 2020.⁵

As seen in years past, the largest healthcare recoveries were obtained from the drug industry. One of the largest settlements involved kickbacks paid to physicians by Novartis Pharmaceuticals Corporation to incentivize them to prescribe the company's pharmaceuticals.⁶ This case alone accounted for approximately one-third of 2020 healthcare recoveries.⁷ Similarly, Novartis and Gilead Sciences were also prosecuted for illegally subsidizing patient copays for their own products through the use of independent foundations,⁸ which allowed these companies to inflate the costs of their drugs.⁹ In addition, four of those foundations paid \$13 million for their involvement in the kickback schemes with Novartis and Gilead. Universal Health Services also paid \$117 million to settle allegations that its psychiatric and behavioral facilities submitted false claims to the government.¹⁰ Additionally, the Oklahoma Center for Orthopaedic and Multi-Specialty Surgery paid \$72 million to settle a case on improper remuneration in exchange for physician referrals.¹¹ As in previous years, the DOJ pursued cases related to opioids as well, including an *electronic health record* (EHR) misrepresentation case related to OxyContin.¹² One settlement case involved a contractor with the *Veterans Administration* (VA), who allegedly failed to offer timely appointments and falsified outpatient clinic wait times.¹³

Several laboratory, testing, and medical device cases and complaints, such as those involving companies such as Logan Laboratories, Inc., Tampa Pain Relief Centers

Inc., SpineFrontier Inc., ResMed Corp., and UTC Laboratories Inc., were filed or settled in 2020.¹⁴ All cases, except for the one involving Logan Laboratories, Inc. and Tampa Pain Relief Centers Inc., involved kickback allegations.¹⁵ The Logan Laboratories and Tampa Pain Relief Centers case involved the ordering of urine drug tests for all patients without a showing of medical necessity.¹⁶

Of note, the totals for 2020 do not include two major cases, including the largest healthcare fraud and opioid enforcement case in DOJ history, which was announced on September 30, 2020.¹⁷ This case involved 345 defendants and more than \$6 billion in alleged losses.¹⁸ The defendants in this case were charged with submitting fraudulent claims connected to telemedicine, substance abuse treatment facilities, opioid distribution, and other fraud.¹⁹ All three areas of the case involved false claims made to both public and private insurance companies.²⁰ Of \$6 billion in alleged losses, \$4.5 billion is related to telemedicine fraud, including paying physicians and nurse practitioners to order unnecessary durable medical equipment (DME), diagnostic testing, and pain medications.²¹ The *Centers for Medicare & Medicaid Services* (CMS) Center for Program Integrity has separately taken action against this fraud by revoking the Medicare billing privileges of an additional 256 medical professionals for their involvement in telemedicine fraud.²² In recognition of the necessity and increased utilization of telemedicine during the COVID-19 pandemic, payors rapidly expanded coverage of, and reimbursement for, telemedicine services during 2020. While the past year has proven the potential of telemedicine to foster efficient, high-quality care for future medical practice,²³ fraud in telemedicine may become a more prevalent issue as well. The second case not included in the 2020 totals involved an \$8 billion settlement with Purdue Pharma LP on October 21, 2020.²⁴ \$2.8 billion of this settlement was related to False Claims Act allegations that Purdue aggressively lobbied physicians to prescribe opioids even when they were not medically necessary.²⁵

As in 2019, the DOJ's FY 2020 press release included an additional section entitled, "*Holding Individuals Accountable*," wherein it reviewed several cases in which the DOJ obtained substantial judgments from individuals, illustrating its continued commitment to the

2015 memorandum authored by then-Deputy Attorney General Sally Yates regarding holding individuals accountable for corporate wrongdoing (often referred to as the “Yates Memo”).²⁶

Money recovered by the DOJ through healthcare fraud enforcement is crucial in returning assets back to federally-funded programs such as Medicare, Medicaid, and TRICARE.²⁷ Since 1986, recoveries made under civil FCA suits total more than \$64 billion.²⁸ Over the past five years, there has been a significant uptick in the number of FCA suits brought on by both *whistleblowers* (also known as *qui tam* lawsuits) and the DOJ, with 672

qui tam cases and 250 *non-qui tam* cases initiated in FY 2020 alone.²⁹ The number of qui tam cases in 2020 is very similar to 2019, but over 100 more non qui tam cases were initiated in 2020 than in 2019, potentially indicating the government’s decreasing reliance on whistleblower activity.³⁰ Despite the Trump Administration’s actions to deregulate the healthcare industry over the past four years, the number of new cases enforcing healthcare fraud and abuse laws in 2020 appears to be on par with figures from previous years and would have been higher if cases settled after September 30, 2020, were included,³¹ suggesting that FCA enforcement will remain high going forward.

1 “Justice Department Recovers Over \$2.2 Billion from False Claims Act Cases in Fiscal Year 2020,” Department of Justice, Office of Public Affairs, Press Release, January 14, 2021, <https://www.justice.gov/opa/pr/justice-department-recovers-over-22-billion-false-claims-act-cases-fiscal-year-2020> (Accessed 1/19/21).

2 *Ibid.*

3 “Justice Department Recovers over \$3 Billion from False Claims Act Cases in Fiscal Year 2019,” Department of Justice, Office of Public Affairs, Press Release, January 9, 2020, <https://www.justice.gov/opa/pr/justice-department-recovers-over-3-billion-false-claims-act-cases-fiscal-year-2019> (Accessed 3/2/20); “Fraud Statistics – Overview” Department of Justice, <https://www.justice.gov/opa/press-release/file/1233201/download> (Accessed 3/2/20).

4 Department of Justice, Office of Public Affairs, Press Release, January 14, 2021.

5 *Ibid.*

6 *Ibid.*

7 *Ibid.*

8 *Ibid.*

9 “Novartis Agrees to Pay Over \$51 Million to Resolve Allegations that It Paid Kickbacks Through Co-Pay Foundations” Department of Justice, U.S. Attorney’s Office: District of Massachusetts, July 1, 2020, <https://www.justice.gov/usao-ma/pr/novartis-agrees-pay-over-51-million-resolve-allegations-it-paid-kickbacks-through-co-pay> (Accessed 1/22/21); “Gilead Agrees To Pay \$97 Million To Resolve Alleged False Claims Act Liability For Paying Kickbacks” Department of Justice, Office of Public Affairs, Press Release, September 23, 2020, <https://www.justice.gov/opa/pr/gilead-agrees-pay-97-million-resolve-alleged-false-claims-act-liability-paying-kickbacks> (Accessed 1/22/21).

10 Department of Justice, Office of Public Affairs, Press Release, January 14, 2021.

11 *Ibid.*

12 *Ibid.*

13 *Ibid.*

14 *Ibid.*

15 *Ibid.*

16 *Ibid.*

17 “National Health Care Fraud and Opioid Takedown Results in Charges Against 345 Defendants Responsible for More than \$6 Billion in Alleged Fraud Losses” Department of Justice, Office of Public Affairs, Press Release, September 30, 2020, <https://www.justice.gov/opa/pr/national-health-care-fraud-and-opioid-takedown-results-charges-against-345-defendants> (Accessed 1/19/21).

18 *Ibid.*

19 *Ibid.*

20 *Ibid.*

21 *Ibid.*

22 *Ibid.*

23 “HHS Issues New Report Highlighting Dramatic Trends in Medicare Beneficiary Telehealth Utilization amid COVID-19” Department of Health and Human Services, July 28, 2020, <https://www.hhs.gov/about/news/2020/07/28/hhs-issues-new-report-highlighting-dramatic-trends-in-medicare-beneficiary-telehealth-utilization-amid-covid-19.html> (Accessed 1/19/21); Department of Justice, Office of Public Affairs, Press Release, September 30, 2020.

24 “Purdue Pharma Pleads Guilty to Criminal Charges for Opioid Sales” By Jan Hoffman and Katie Benner, December 17, 2020, <https://www.nytimes.com/2020/10/21/health/purdue-opioids-criminal-charges.html> (Accessed 1/22/21).

25 *Ibid.*; “False Claim Act Recoveries During 2020: A Strong Year for the Department of Justice” Polsinelli, January 21, 2021, <https://www.polsinelli.com/intelligence/false-claim-act-recoveries-during-2020> (Accessed 1/22/21).

26 Department of Justice, Office of Public Affairs, Press Release, January 14, 2021; “Individual Accountability for Corporate Wrongdoing” By Sally Quillian Yates, Letter to Assistant U.S. Attorneys General and All United States Attorneys, September 9, 2015.

27 Department of Justice, Office of Public Affairs, Press Release, January 14, 2021.

28 *Ibid.*

29 “Fraud Statistics – Overview” Department of Justice, <https://www.justice.gov/opa/press-release/file/1354316/download> (Accessed 1/19/21).

30 *Ibid.*

31 *Ibid.*; Polsinelli, January 21, 2021.



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