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COVID-19 Health Care Fraud Enforcement on the Rise: What's Ahead for the Life Sciences & Healthcare Industries

On April 20, 2022, the Department of Justice (“DOJ”) announced twenty-one (21) defendants were charged in nine (9) different districts related to \$149 million in COVID-19-related false billing issues.¹ \$8 million in cash and other fraud proceeds were also seized as part of these actions. Defendants included owners and executives of medical businesses, physicians, marketers, and manufacturers.

The announcement alleged several different COVID-19 health care fraud schemes, including: (a) obtaining confidential patient information and sometimes clinical samples from patients seeking COVID-19 testing and using that information to submit false and fraudulent claims for unrelated, medically unnecessary tests or in-office visits that did not occur; (b) billing for sham telemedicine encounters; (c) misappropriating the Provider Relief Fund (“PRF”), which was intended to give financial assistance to medical providers providing medical care to Americans suffering from COVID-19; and (d) falsifying COVID-19 vaccination record cards.

Additionally, the Center for Program Integrity, Centers for Medicare & Medicaid Services (“CPI/CMS”) announced an additional twenty-eight (28) administrative actions against providers for their alleged involvement in fraud, waste, and abuse schemes related to the delivery of care for COVID-19 and attempts to inappropriately capitalize upon the public health emergency.

Collectively, the charges that DOJ announced on April 20 demonstrate DOJ’s commitment to and focus on investigating and ultimately prosecuting alleged schemes that, in the agency’s view, exploited the pandemic and the nation’s public health emergency. This is just the latest in a string of enforcement actions announced by DOJ this year. These activities stem from the active work of the COVID-19 Fraud Enforcement Task Force, which was established in May 2021 to marshal



resources to enhance efforts to combat and prevent pandemic-related fraud.

Implications for the Life Sciences and Healthcare Industries. DOJ’s April 20 announcement reflects the rise in enforcement related activity in the life sciences and health care industries, and sends a clear signal that alleged pandemic-related wrongdoing will be a top enforcement priority. For two years, as the country addressed the COVID-19 pandemic, there had been a drop in DOJ investigations and whistleblower complaints as the pandemic inhibited traditional ways of investigation and the courts experienced an increase in case backlogs. However, as the country opens and returns to “normal”, DOJ is ramping up its enforcement activities with a focus on activities related to COVID-19 and the public health emergency. We anticipate that these efforts will increase and become more visible, including seeing a rise in new whistleblower complaints and investigations opened over the next year. While all COVID-19-related activities will likely remain the focus of DOJ and whistleblowers, particular focus should be paid to the following categories of COVID-19-related activities: (1) the distribution of unapproved or adulterated COVID-19 products or other products such as counterfeit personal protective equipment (“PPE”) affected by pandemic-related supply chain disruptions; (2) off-label promotion of products for COVID-19-related uses; (3) free services or customer accommodations made “in an effort to mitigate pandemic-related challenges”; (4) misappropriation of pandemic related funds, including the COVID-19 uninsured fund; and (5) areas related to government waivers intended to increase access to care, such as those that increase access to telehealth services or health care products (e.g., expanded coverage for respiratory-related devices and equipment), including the need to properly unwind reliance on waivers as the Public Health Emergency comes to an end. Simultaneously, DOJ also is continuing to focus on more traditional kickback related schemes, such as paid services arrangements, meals, and travel expenses involving health care professionals.

To prepare for the next wave of enforcement and whistleblower complaints, life sciences and healthcare companies should consider conducting updated risk assessments and reviews of their compliance programs and operations during the pandemic. As companies transition out of the pandemic, companies should take this opportunity to review their COVID-19-related practices and ensure appropriate documentation and compliance measures are in place.

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¹ Dep't of Justice, Justice Department Announces Nationwide Coordinated Law Enforcement Action to Combat Health Care-Related COVID-19 Fraud: Criminal Charges Brought Against Owners and Executives of Medical Businesses, Physicians, Marketers, and Manufacturers of Fake COVID-19 Vaccination Record Cards with Losses Exceeding \$149 Million (April 20, 2022) <https://www.justice.gov/opa/pr/justice-department-announces-nationwide-coordinated-law-enforcement-action-combat-health-care>.