

Justice Department Releases Data on FY 2020 False Claims Act Recoveries: What to Expect in 2021 and Beyond

Late last week the U.S. Department of Justice (DOJ) released a summary of its False Claims Act (FCA) settlements and judgments recovered during fiscal year 2020 (which ended on September 30, 2020). All in all, DOJ reports that it obtained more than \$2.2 billion in FCA matters related to the health care industry, procurement, bid-rigging, and other types of fraud in government programs. This figure represents a drop of over \$850 million from the prior year and the least since 2008.

By far the lion's share of recoveries occurred in the health care sector, with more than \$1.8 billion of the total attributable to drug and medical device manufacturers, managed care providers, hospitals, pharmacies, hospice care facilities, labs and physicians. Of these, the vast majority originated as *qui tam* (i.e. whistleblower) suits. DOJ initiated less than 2% of FCA suits in the health care sector.

With the advent of 2021 and a new administration, we think that the health care and pharmaceutical industries can expect renewed vigor in the pursuit of FCA settlements and cases, with the numbers heading back up to those seen during the Obama administration, where recoveries hit over \$6 billion in 2014. As some media pundits have pointed out, many expect that the Biden administration will look like Obama 2.0, and the announcement that Biden's pick for Health and Human Services (HHS) secretary, Xavier Becerra, lends some validity to that argument. Becerra, California's attorney general and a former Democratic congressman, is well known for his dogged pursuit of cases against the Trump administration (taking it to court over 105 times), and suits against pharmaceutical manufacturers for bad over-the-counter medications and oil company Valero. The overarching theme of Becerra's tenure as Attorney General has been a focus on consumer protection.

Biden's appointee for associate attorney general, and therefore the de-facto head of the Civil Division (which is responsible for matters arising under the FCA), Vanita Gupta, is a veteran of the Obama DOJ, formerly serving as Principal Deputy Assistant Attorney General and head of the Civil Rights Division. In her former tenure at DOJ, Gupta focused on criminal justice reform and the prosecution of hate crimes and human trafficking, promoting disability rights, and protecting the rights of LGBT persons and others

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against discrimination. Like Becerra, Gupta is known for her active and aggressive approach. Entities in the health care and pharmaceutical spaces should expect that approach will be applied to FCA enforcement.

The FisherBroyles Pharmacy and Health Care Law team is pleased to keep you updated on events of interest to those in the healthcare, medical device, and pharmaceutical industries. Questions related to the subject matter of this alert may be directed to any of following attorneys.

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