

Biden Administration Likely to Expand Enforcement Efforts in the Health Care Industry

By Amanda M. Connelly

Nearly every administration has carried out efforts to investigate fraud and abuse in the health care industry, but under the Biden Administration, those efforts are likely to expand. Below is a brief review of areas where the Biden Administration will likely expand efforts to investigate fraud in the health care industry.

Pandemic-Relief Related Investigations:

In 2020, enforcement efforts predominantly focused on cases of fraud filed by individuals and small businesses related to the Paycheck Protection Program (PPP) and Economic Injury Disaster Loans (EIDL). In 2021, the Department of Justice (DOJ) is continuing those investigations and enforcement actions, while likely expanding its focus to larger companies as well. Acting Assistant Attorney General (AAG) Brian Boynton of the DOJ's Civil Division has stated his division "is working closely with various Inspector Generals and other agency stakeholders to identify, monitor, and investigate the misuse of critical pandemic relief monies, and [they] expect this collaborative effort to translate into significant cases and recoveries." ¹

Opioid Epidemic Abuse:

The acting AAG indicated that the ongoing opioid epidemic has been exacerbated by the pandemic. In December of 2020, the CDC reported over 81,000 drug overdose deaths in the U.S. from May 2019 to May 2020. The Biden Administration seeks to utilize the False Claims Act (FCA) to pursue parties responsible for fueling the opioid epidemic, such as pharmaceutical companies, health care practitioners, and pharmacies. The FCA, originally enacted in 1863, provides that any person or company that knowingly submits false claims to the government will be liable for damages plus a penalty that is linked to inflation. Acting AAG Boynton expects to see additional actions as the Civil Division focuses its resources on combatting the opioid crisis.

Nursing Home Investigations:

A continuing priority under the Biden Administration will be to prevent the abuse and exploitation of senior citizens in nursing homes, skilled care facilities, and rehabilitation centers. Acting AAG Boynton stated the DOJ is actively investigating nursing homes across the country that are providing deficient care to senior citizens. Again, by use of the FCA, the DOJ likely will continue its efforts to pursue these fraudulent matters.

¹ Department of Justice Press Release, *Acting Assistant Attorney General Brian M. Boynton Delivers Remarks at the Federal Bar Association Qui Tam Conference* (Feb. 17, 2021).

The acting AAG in his February remarks additionally noted that the Civil Division will continue its focus on fraud relating to electronic health records, telehealth schemes, and cybersecurity.

Roetzel will continue to monitor developments in this area. For more information and insight on this matter, please contact one of the listed Roetzel attorneys.

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