

The US Department of Justice (DOJ) announced a record recovery for fraud and false claims of US\$5.69 billion for FY 2014. With recoveries amounting to more than US\$2.3 billion of the total recovery, healthcare remains the perennial heavyweight. This marks the fifth consecutive year that healthcare fraud recoveries have topped US\$2 billion annually. The DOJ highlighted recoveries that cut a swath through the industry, including hospitals, home health providers, medical device makers, pharmacy providers and pharmaceutical companies.

These staggering figures concretely illustrate the administration's high priority of fighting healthcare fraud. The DOJ, however, is far from being satisfied. It promises to continue what the DOJ calls a "steady, significant and continuing success." Attorney General Eric Holder warned that, "The department will continue to enforce the law aggressively to ensure the integrity of government programs designed to keep us safer, healthier and economically more prosperous."

Organizations cannot ignore that the DOJ relies on whistleblowers as an integral part of its mission. "We acknowledge the men and women who have come forward to blow the whistle on those who would commit fraud on our government programs," said Acting Assistant Attorney General Joyce Branda. According to the DOJ, whistleblowers produced nearly US\$3 billion of the recoveries in FY 2014. For the second year in a row, whistleblowers brought more than 700 *qui tam* suits. Because the False Claims Act incentivizes whistleblowers to sue by offering them up to 30% of the recovery, whistleblowers received about US\$435 million in FY 2014. The recent announcement is certain to encourage this growing trend. Disgruntled employees are more incentivized than ever to become whistleblowers, and must be treated carefully in order to avoid encouraging unnecessary and expensive litigation.

Dealing with whistleblower complaints can be expensive even when they are not substantiated. Not every "recovery" touted by the DOJ involves uncontested fraud. The DOJ acknowledges at the bottom of many of its individual press releases that the "recovery" merely resolves allegations without a determination of liability. Such settlements can result from the combination of treble damages, per claim penalties rivaling actual damages and mandatory attorneys' fees that make trial unrealistic despite good defenses that may be raised.

"Be prepared" – that is the take away. In this environment, it is crucial for every component of the healthcare industry to continue combating fraud and abuse. A robust compliance program is far cheaper to implement and execute than dealing with a fraud allegation that will cost large sums to investigate and defend. Your organization does not want to be part of next year's record-breaking statistics.

Squire Patton Boggs lawyers have significant experience in defending companies accused of white collar crime. We have the experience to (1) implement strategic planning and compliance programs to avoid investigations or litigation; (2) make defensive presentations to the government in *qui tam* suits to obtain a government declination of intervention; (3) negotiate creative settlement arrangements; (4) handle investigations; and (5) coordinate our team and vast resources to represent your organization. If you have any question about the adequacy of your compliance program, now is the time to examine and update it, if necessary. For more information on how we can help you, please contact your principal Squire Patton Boggs lawyer or one of the lawyers listed in this publication.

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