

Anti-Fraud Enforcement in the Coronavirus Era

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In times of crisis, there are heroes, villains, victims, and everyone in between. Amidst the COVID-19 crisis, many valiant efforts are under immense time pressure—to care for the ill, to protect the vulnerable, to find and test new treatments, to screen for illness, to manufacture and distribute supplies, to formulate and produce vaccines.

Despite the time urgency of these efforts, companies cannot let compliance programs and compliance vetting fall by the wayside. The False Claims Act passed in 1863, in the middle of the American Civil War, to deter, punish, and prevent fraud on the United States at that time of emergency. Notable Civil War era fraud included sales of defective weapons, manufacture of deficient blankets, and provision of sick horses to the Union army.

On Friday, the Department of Justice (DOJ) issued a [press release](#) urging the public to report suspected fraud schemes related to COVID-19 and announcing that each U.S. Attorney has been directed to appoint a Coronavirus Fraud Coordinator and to prioritize the investigation and prosecution of Coronavirus-related fraud schemes. DOJ listed example fraudulent schemes, such as false statements of Coronavirus cures and medical providers obtaining patient information for COVID-19 testing and then using that information to fraudulent bill for other tests and procedures.

United States Attorney's Offices across the country are at the ready. They have issued specific COVID-19 fraud notices, including soliciting tips from people who believe they are victims, and providing pointers to avoid falling victim to a fraudulent scheme. Examples include the [Central District of California](#), the [Northern District of Illinois](#), and the [Western District of Pennsylvania](#). But, as we know from defending against meritless whistleblower complaints, one person's perception of fraud may be another's effort to do the right thing in a time of crisis.

Enforcers are paying attention during the COVID-19 crisis, and those looking to help must ensure that first, their intentions are good, and second, their good intentions are not misconstrued. Our advice to companies? Don't forget compliance basics such as:

- Ensuring new, hurried arrangements do not appear to violate the Anti-Kickback Statute, such as arrangements wherein supplies or staff are provided to referral sources or discounted to encourage referrals.
- Exercising quality control over newly produced equipment and pharmaceuticals.
- Billing claims only for medically necessary goods and services.
- Documenting your good faith rationale for business decisions.

Such measures serve many purposes: improved patient care, good stewardship of government funds; and the diminishment of the chances that good intentions will later be thrown into doubt. We applaud health care industry members and others for their quick actions and caveat they should continue to be thoughtful from a compliance perspective.

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