

DOJ's FY 2022 False Claims Act Recoveries: A Mixed Bag

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Lowest Total Recoveries Since 2008

Record-Shattering Number of New Cases Filed

Health Care and Life Sciences Cases Continue to Dominate

On February 7, 2023, the U.S. Department of Justice (DOJ) released its annual False Claims Act (FCA) enforcement statistics for fiscal year (FY) 2022, which ended on September 30, 2022.^[1] While total recoveries exceeded \$2.2 billion, this is a drop of more than 50 percent from the \$5.7 billion recovered in FY 2021, marking the lowest annual reported recovery in 14 years. The total recoveries in fraud cases brought with respect to the health care and life sciences industries fell to the lowest level since 2009.

However, even in a “down” year (the reduction is likely due largely to the lack of major settlements with prescription opioid manufacturers, including a \$2.8 billion resolution with one opioid manufacturer in FY 2021), health care and life sciences entities continue to be the primary focus of the enforcement effort by DOJ and relators. Indeed, of the more than \$2.2 billion in FCA settlements and judgments reported by DOJ, over \$1.7 billion (more than 80 percent of all recoveries) related to matters that involved the health care and life sciences industries, including drug and device manufacturers, durable medical equipment suppliers, home health and managed care providers, hospitals, pharmacies, hospice organizations, and physicians.

As significant, DOJ filed 296 new FCA matters last year—the most in reported history. And, while the numbers of new filings impacting health care and life sciences companies did not break records (93 new FCA matters filed by DOJ), they are generally consistent with filings in FY 2021 (102 new FCA matters filed by DOJ), which, at the time, marked an upward trend in DOJ filing its own actions, independent of relator *qui tam* cases.

Declined Cases Lead the Recoveries

For the first time since the DOJ statistics have been maintained regarding FCA recoveries, more monies were recovered from *qui tam* cases in which the United States declined to intervene than in cases in which the United States intervened or otherwise pursued. Last year, \$1.2 billion was recovered in *qui tam* cases in which the government declined to intervene. By contrast, \$777 million was recovered in cases where the government intervened or otherwise pursued.

Not insignificantly, recoveries in declined cases led the way in all fraud recoveries, not just in health care. These results continue to shine a spotlight on the role of relators in bringing cases and the increase in those cases the government declines being pursued by private plaintiffs.

Overall Drop in Case Filings

Regarding case filings relating to the health care and life sciences industries, relators filed 371 new *qui tam* cases in FY 2022, the lowest since FY 2009, when 279 *qui tam* cases were filed.

The drop in case filings is likely a corollary of the pandemic. During that period, both investigations and litigations stalled. However, given the aggressive posture DOJ has taken with respect to enforcement, particularly with respect to the health care and life sciences industries, we do not expect FY 2023 to show a similar decline.[\[2\]](#)

Principal Enforcement Areas of Focus

DOJ's press release noted the following areas as principally contributing to recoveries in FY 2022:

- Fraud and abuse in the Medicaid program
- Unnecessary services and substandard care
- Unlawful kickbacks
- Medicare Advantage matters
- Drug pricing

As additional principal areas of focus from FY 2022, DOJ highlighted its continued efforts to pursue COVID-19-related fraud, citing improper disbursements and misuse of funds under the Paycheck Protection Act as enforcement priorities. DOJ's release also touts the first settlement under its "Civil Cyber-Fraud Initiative," which was launched in October 2021 and is dedicated to leveraging the FCA to combat new and emerging cyber threats. DOJ also emphasized its continued commitment to pursuing and holding individuals accountable for submitting allegedly false claims.

Key Takeaways & Looking Ahead in FY 2023

While a more than 50 percent drop in total fraud recoveries is headline-worthy, entities and the health care and life sciences industries can take little recompense given that those industries still account for more than 80 percent of all fraud-related recoveries. There is no question that DOJ and private relators focus on these entities.

Having moved past the pandemic, we expect FY 2023 recoveries to be more robust. We also expect health care and life sciences companies to face increased scrutiny in areas such as managed care, the use of COVID-19 Provider Relief Funds, allegations of false claims tied to allegations of Stark Law and Anti-Kickback Statute violations, and claims of medically unnecessary or substandard care.

Additionally, the disparity between recoveries in cases pursued by relators on their own, as compared to cases pursued by the government, should send a message to entities in these industries that they must continually be focused on ensuring comprehensive and effective compliance programs are in place. Correspondingly, those entities would be well served to aggressively defend against investigations and litigation generated as a result of those efforts, regardless of whether those actions are instituted by the government, or a relator pursuing claims where the government has declined to intervene.

FOOTNOTES

[1] <https://www.justice.gov/opa/press-release/file/1467811/download>.

[2] DOJ's press release touts the FY 2022 as having the second highest number of settlements in history. However, the statistics made available by the agency do not share that level of detail.

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