

DOJ Recovers \$3.5 Billion in False Claims Act Cases in FY2015 and Pays Record Amount to Qui Tam Relators

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Late last week **DOJ** announced that in FY2015 it obtained more than \$3.5 billion in settlements and judgments from civil cases involving allegations of false claims against the government. Once again, health care fraud recoveries led the pack, driven by *qui tam* (whistleblower) filings, including notable recoveries in declined *qui tam* cases. DOJ awarded *qui tam* relators a record \$597 million, bringing the total awards to relators since the 1986 Amendments to the FCA to \$5.3 billion. Though recoveries vary from year to year, FY2015 results demonstrate DOJ's commitment to using the FCA to vigorously pursue allegations of health care fraud, defense department and procurement fraud, and financial and other fraud.

In health care matters, accounting for \$1.9 billion of recoveries, last year's recoveries reinforce next year's enforcement priorities, as set forth by Deputy Assistant Attorney General Branda at the September 2015 American Health Lawyers Association Fraud and Compliance Forum. Ms. Branda noted DOJ's interest in pursuing skilled nursing cases, involving allegations that the therapy provided to residents is not medically necessary or not provided to benefit to the patient, and cases against hospitals alleging the payment of physician compensation above fair market value or otherwise in violation of the Stark Law.

These priorities are reflected in DOJ's FY2015 announcement that touted "the largest failure of care settlement" with a skilled nursing home company, Extencicare Health Services Inc., which agreed to pay \$32.3 million to resolve allegations that it billed Medicare for deficient nursing services and medically unreasonable and unnecessary rehabilitation therapy services. Likewise, the priorities surfaced in the late-year Stark Law recoveries from hospitals. Of the \$330 million recovered from hospitals, DOJ noted several settlements with hospitals alleging violations of the Stark Law due to physician compensation arrangements. These settlements included Adventist Health System for \$115 million, North Broward Hospital District for \$69.5 million, and Columbus Regional Healthcare System and Dr. Andrew Pippas for \$25 million plus contingent payments up to an additional \$10 million. DOJ announced the results of a major initiative against hospitals, and highlighted that hundreds of hospitals cumulatively paid almost \$216 million in settlements to resolve allegations of implanting cardiac devices in Medicare patients contrary to criteria established by CMS. DOJ also noted that claims involving the pharmaceutical industry accounted for \$96 million in settlements and judgments.

The recovery of \$3.5 billion is the fourth largest yearly recovery by DOJ, exceeded only by recoveries in FCA cases in each of the prior three years. DOJ reported that it recovered \$2.8 billion of the \$3.5 billion in cases filed under the *qui tam* provisions. Of the \$2.8 billion, a record \$1.1 billion was recovered in cases in which the U.S. declined to intervene. DOJ also reported that there were 638 new cases filed under the FCA's *qui tam* provisions in FY2015

In health care fraud matters in particular, DOJ recovered \$1.4 billion in health care cases in which it intervened, and a record \$468 million in health care cases in which it declined. Additionally, 423 new *qui tam* matters alleging health care fraud were filed in FY2015.

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