

COVID-19 Fraud and Law Enforcement Responses - In the Middle of the Pandemic, the Government Warns it Very Much CARES About Compliance and Enforcement

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Even in the midst of a global pandemic, some individuals and businesses have used the Coronavirus (COVID-19) crisis to take advantage of others. In response to reports of rampant fraud related to the pandemic, on March 16, 2020, United States Attorney General William Barr (AG Barr) directed every United States Attorney's Office to prioritize detection, investigation, and prosecution of all criminal conduct related to the COVID-19 pandemic. Less than a week later, the Department of Justice (DOJ) filed its first COVID-19 fraud enforcement action against operators of a website offering fraudulent COVID-19 vaccine kits.

On March 24, 2020, Deputy Attorney General Jeffery Rosen published a memorandum detailing reported fraudulent and criminal schemes related to the COVID-19 pandemic, listing enforcement authorities to employ against such schemes, and encouraging cooperation with state and local law enforcement. On that same day, AG Barr created a task force to address market manipulation, hoarding, and price gouging related to the COVID-19 pandemic.

Here in South Carolina, federal law enforcement has also taken a firm stance against COVID-19-related fraudulent and criminal behavior. Newly appointed United States Attorney for the District of South Carolina Peter McCoy, Jr and Attorney General Alan Wilson established the South Carolina COVID Strike Team, which is comprised of members of the United States Attorney's Office, federal law enforcement officers, officers with the South Carolina Law Enforcement Division, and members of the South Carolina Attorney General's Office. The federal agencies involved with the Strike Team include the Internal Revenue Service (IRS), Federal Emergency Management Agency (FEMA), Federal Bureau of Investigation (FBI), Department of Health and Human

Services Office of Inspector General (HHS-OIG), Defense Criminal Investigation Service (DCIS), Veterans Affairs Office of Inspector General (VA-OIG), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), and Drug Enforcement Administration (DEA). In addition, the Strike Team is working with local law enforcement agencies throughout the state on an as needed basis.

The South Carolina COVID Strike Team's stated purpose is to investigate and prosecute fraud, hoarding and price gouging related to the COVID-19 pandemic. Though certainly not the only industry to be affected, the health care industry will surely be a primary focus of enforcement efforts-and it should be noted that of the more than \$3 billion recovered by the DOJ from False Claims Act cases last fiscal year, \$2.6 billion of it related to the health care industry.

On March 27, 2020, President Donald Trump signed into law the Coronavirus Aid, Relief, and Economic Security (CARES) Act, which designated \$376 billion in monetary relief for small businesses, workers, and health care providers. On April 10, 2020, the Department of Health and Human Services (HHS) began its distribution of \$30 billion to eligible health care providers, out of an allotted \$100 billion earmarked in the CARES Act for expenses or lost revenue attributable to COVID-19-related care. The manner in which health care providers use those payments will certainly be an area targeted for enforcement. Indeed, any health care provider that receives such a payment must quickly assess whether it is eligible to or will accept the payment, which is conditioned on acceptance of HHS's Relief Fund Payment Terms and Conditions (T&C)- the T&C remind health care providers of limitations and reporting requirements imposed by the CARES Act, as well as other relevant statutory provisions. Providers can expect the HHS-OIG to scrutinize their strict compliance with the conditions referenced above if they retain these funds.

During the pendency and after the conclusion of the COVID-19 pandemic, we expect law enforcement to focus its investigation and prosecution efforts on several additional areas, including, but not limited to:

- Aberrant medical claims
- Alleged improper Small Business Administration loan certifications
- Supply Hoarding
- Price Gouging
- Student loan collections fraud
- Fraudulent websites, emails, and telemarketing

With law enforcement's escalated focus on pursuing the prosecution of fraud and criminal conduct related to the pandemic, small business owners and health care providers taking advantage of the relief afforded by the CARES Act must likewise ensure they are focused on maintaining compliance with applicable laws, rules, and rapidly evolving guidance. If you have any questions or would like more information, please contact Alice Harris at 803.253.8284 or aharris@maynardnexsen.com, Mark Moore at 803.540.2146 or mmoore@maynardnexsen.com, or your regular Nexsen Pruet attorney.



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