

DOJ Enforcement Actions Alleging PPP Loan and Healthcare-Related COVID-19 Fraud Continue to Rise

by Christopher D. Adams, Robert B. Hille & Rachel A. Frost

In May 2021, U.S. Attorney General Merrick Garland established the COVID-19 Fraud Enforcement Task Force to utilize the resources of the U.S. Department of Justice (DOJ) and partner with various governmental agencies to combat COVID-19-related fraud. The DOJ's efforts have led to investigations and prosecutions involving Paycheck Protection Program (PPP) fraud as well as healthcare-related COVID-19 fraud. The prevalence of pandemic-related relief fraud has been known for some time, but the extent and implications of such fraud are only now becoming clear.

Background

During the beginning of the COVID-19 pandemic, the PPP was established under the The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) and implemented by the Small Business Administration (SBA) to keep small businesses and other organizations afloat. As it relates to PPP fraud, the DOJ has recently affirmed that the federal government will continue to persistently pursue fraud related to the PPP, the total of which is estimated to be as high as \$80 billion. In late March 2022, the DOJ stated that only 178 individuals nationwide had been convicted in PPP fraud cases to date, however the government signaled that many more prosecutions are coming, making these initial convictions the tip of the iceberg. Federal prosecutors are calling this theft of taxpayer money intended to help those harmed by the coronavirus pandemic "the largest fraud in U.S. history" as it represents approximately 10 percent of the \$800 billion handed out to small businesses in low-interest uncollateralized loans from April 3, 2020, through May 31, 2021.

Due to the urgency caused by the pandemic's impacts on the business sector, the need to dispense this important worker relief came at the sacrifice of instituting a more stringent appli-

cant vetting process. Although many businesses and individuals benefitted by using their relief payments as intended, this fast-tracked process led to a relaxation of internal controls that also, in turn, increased the risk of PPP fraud. While PPP relief was designed to provide an incentive to keep workers employed, far too many business owners instead pocketed the money or misappropriated the funds to buy personal items, luxury goods, and vacation properties. For example, federal prosecutors have targeted individuals who used their PPP loan funds to pay for luxury purchases including hotel stays, automobiles, jewelry, and clothing. Most recently, in May 2022 in the Eastern District of North Carolina, a lawyer pled guilty and was ordered to forfeit over \$2 million as a result of being involved in a fraudulent assistance loans scheme that funded her plastic surgery and several vacation homes, including one in Miami.

DOJ Enforcement Actions on the Healthcare Front

Today, the list of DOJ investigations and prosecutions are not just limited to misuse of PPP loans and PPP loan fraud schemes. By way of a nationwide law enforcement effort aimed to hold individuals accountable and to deter more of the same, the DOJ is looking to cast a wide net around what it sees as



Christopher D. Adams



Robert B. Hille



Rachel A. Frost

healthcare-related COVID-19 fraud. Kevin Chambers, Director for COVID-19 enforcement for the DOJ, has described such coordinated efforts as “extraordinary” with the purpose being “to prosecute some of the largest and most-wide ranging pandemic frauds detected to date.”

At this writing, nearly two dozen defendants from across the United States have been charged for their alleged participation in such schemes. Federal law enforcement agencies that are involved include the Federal Bureau of Investigations, Department of Homeland Security; Department of Health and Human Services Office of the Inspector General, Food and Drug Administration Office of Criminal Investigations; and the Postal Inspection Service

The subjects and targets of healthcare-related COVID-19 fraud cases vary from alleged bogus telemedicine encounters, to falsifying COVID-19 vaccination cards, to misuse of relief funds – and from medical professionals to manufacturers and distributors, respectively. For example, in a case out of the Southern District of Florida, a medical professional was charged with healthcare fraud for allegedly billing bogus telemedicine encounters that did not legitimately occur during the pandemic. In another case out of the Northern District of California, a pharmacy director was accused of using actual vaccine lot numbers to falsify COVID-19 vaccination cards. In yet another case out of the District of New Jersey, a Postal Service employee was charged with conspiracy for allegedly participating in a scheme to distribute fraudulent COVID-19 vaccination record cards to unvaccinated people. Most recently, in the Middle District of Pennsylvania, an individual was charged with knowingly creating and possessing an unauthorized COVID-19 vaccination card, which bore an official government insignia

Additionally, charges have been brought against individuals for misappropriating the CARES Act Provider Relief Fund (PRF) monies meant to reimburse eligible medical providers for increased costs or lost revenue caused by the COVID-19 pandemic. For example, earlier this month in the Northern District of California, an individual who owned and operated healthcare and hospice companies pleaded guilty to theft of government property because of his misuse of PRF monies. In that case, the individual misappropriated nearly \$200,000 worth of allocated PRF monies for personal use rather than for its intended purpose – to ensure continued relief and access to medical care. Moreover, the Center for Program Integrity, as a part of the Centers for Medicare & Medicaid Services (CPI/CMS), has taken corresponding administrative actions against medical providers accused of such alleged wrongdoings.

Key Takeaways

As demonstrated above, law enforcement actions are being brought more frequently and are extensive in scope. During the DOJ’s pursuit of PPP fraud prosecutions, it may become challenging for the government to discern between borrowers that intended and affirmatively acted to commit fraud and those that were well-intentioned but nonetheless failed to comply with this fast-tracked federal relief program. As a result, many unwitting borrowers may find themselves caught in the DOJ’s fishnet of fraud charges. Therefore, it is critical for those business owners who received PPP funds to immediately review their compliance, mitigate any non-compliance, and address corrective measures and exposure to enforcement with the appropriate government agency.

Moreover, healthcare providers, owners and executives of medical businesses, physicians, and healthcare marketers and manufacturers should keep careful track of their billing practices, including billing for telemedicine, and institute safeguards to ensure COVID-19 relief funds are not being intentionally or negligently misused.

An essential first step is obtaining knowledgeable legal counsel or other experts who can accurately assess whether there was sufficient compliance, what any potential exposure might be, and how, if necessary, to effectively address that exposure and respond to requests for information from a government agency.

About the Authors

Christopher D. Adams is a partner and chair of the Criminal Defense & Regulatory Compliance Practice Group at Greenbaum, Rowe, Smith & Davis LLP, where he concentrates his practice in the areas of criminal defense, internal investigations, attorney ethics matters and disciplinary proceedings, and complex commercial litigation. He can be reached at 732.476.2692 or by email at cadams@greenbaumlaw.com.

Robert B. Hille is a partner in the firm’s Litigation and Healthcare Departments, with white-collar experience encompassing both state and federal investigations, including those related to healthcare fraud and abuse and the taking of fraudulent payments from government entities. He can be reached at 973.577.1808 or by email at rhille@greenbaumlaw.com.

Rachel A. Frost is an associate at the firm, where she concentrates her practice in the areas of commercial and healthcare litigation, criminal defense, internal investigations, and regulatory compliance. She can be reached at 732.476.2470 or by email at rfrost@greenbaumlaw.com.