



Justice Department Releases False Claims Act Recovery Numbers for Fiscal Year 2014 – Another Record Year

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The Justice Department recently released the government's False Claims Act recovery numbers for fiscal year 2014. These investigations and lawsuits resulted in the recovery of \$5.69 billion dollars – the highest annual amount ever recovered by the government – exceeding fiscal year 2013's total of \$3.8 billion. Of last year's recoveries, \$2.3 billion were related to health care fraud and \$3.1 billion were related to recoveries from banks and other financial institutions allegedly involved in making false claims for federally insured mortgages and loans.

Since January 2009, the Justice Department has used the False Claims Act to recover more than \$22 billion, of which over \$14 billion was recovered in health care cases. Many of these cases begin as citizen whistleblower or qui tam cases, whereby a private citizen can sue alleging false claims or fraud on behalf of the government, and, if the government prevails, receive a percentage of the recovery. Notably, the number of these suits filed was over 700 for each of the last two years. Whistleblowers received \$435 million out of the total recovery of nearly \$3 billion in these cases.

As in past years, some of the largest recoveries were in pharmaceutical cases, including over \$1 billion paid by a pharmaceutical company for allegedly improperly promoting their drugs for unapproved or "off-label" uses. Additionally, Stark Law and Anti-Kickback Statute investigations continue to be a focus in False Claims Act cases. Last year there were two large such settlements – one involving a pharmacy provider and one involving a hospital chain. There were also a number of large settlements against hospitals and home health providers who allegedly provided unnecessary services.

The focus on health care fraud related investigations and recoveries by the government show no signs of losing steam in 2015. Given the government's increasing focus on enforcement actions to prevent and deter fraud, the implementation of an effective compliance program is more important than ever.

Having a strong compliance culture lessens the chance that an employee will commit a violation of the law that may have adverse results for the health care provider, and also increases the chance that, if a violation does occur, it will be discovered and addressed in a timely manner and before it becomes a more serious problem. Investing in a strong compliance program on the front end can help the company avoid the devastating financial and reputational costs of a federal investigation and, potentially, a prosecution or civil enforcement action.

While a compliance program is not a guarantee that a government investigation will not occur, if a potential criminal problem arises, the existence of a robust and vibrant compliance program is a significant factor that the government considers when deciding whether to prosecute a company. If a company is prosecuted, the existence of an adequate compliance program may limit the potential penalty.

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