

Healthcare Fraud Settlement Showcases Government's Additional Focus on COVID-19-Related Fraud

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The Department of Justice (“DOJ”) last month announced a new blockbuster settlement agreement under the False Claims Act, 31 U.S.C. § 3729 *et seq* (“FCA”), involving alleged violations of the Stark law and other efforts to defraud federal and state healthcare programs. The agreement also resolved the government’s allegations that the defendants—having allegedly engaged in healthcare fraud—further violated the FCA by obtaining a loan through the Paycheck Protection Program (“PPP” or “Program”) while certifying they were not engaged in illegal activities. Although this settlement appears principally to address allegations of healthcare fraud, the resolution of FCA claims involving alleged PPP fraud highlights the government’s efforts to root out those who attempt to defraud COVID-19 relief programs.

In the settlement agreement, the U.S. government (“government”), the State of Florida (“Florida”), and several relators contend that Physician Partners of America, LLC (“PPOA, LLC”), an entity owned by Dr. Rodolfo Gari that manages or indirectly owns several other entities, Dr. Gari, and Dr. Abraham Rivera, the medical director of these entities (collectively, “PPOA”), committed various FCA violations. Regarding the PPP FCA claim, the government alleges in the settlement agreement that PPOA, LLC obtained a PPP loan^[1] from Centennial Bank in April 2020. Under Program rules, a borrower had to certify that it was not engaged in any illegal activities under federal, state, or local law. The government contends that PPOA’s certification was false because PPOA, at the time it applied for PPP funds, pursued a scheme to overbill and defraud federal healthcare programs. Specifically, the government alleged (i) that PPOA violated the Stark Law, the physician self-referral law, by paying kickbacks to physicians working at PPOA-managed entities who referred patients to PPOA for reimbursable services; (ii) that PPOA submitted false claims to federal healthcare programs by billing for services and medical testing at the highest rate available despite these services or tests not being medically necessary or reasonable for each individual patient; and (iii) that PPOA improperly billed Medicare at a higher rate for “monitored anesthesia care” when PPOA in fact provided only local anesthesia. Furthermore, the government and Florida alleged that PPOA submitted false claims to federal and state healthcare

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programs for scheduling unnecessary biweekly telemedicine appointments for Florida patients after Florida paused non-emergency medical procedures in the wake of the pandemic.

PPOA has not admitted liability regarding any of the settlement agreement's allegations. However, under the terms of the agreement, PPOA will pay the government and Florida the sum of \$24,500,000, with 1.625% interest accruing as of November 8, 2021. The terms of the settlement schedule payments so that PPOA shall pay the government \$10,000,000 plus interest within seven (7) days after the agreement's effective date and pay the remaining \$14,500,000 plus interest to the government within ninety (90) days of the agreement's effective date. Further, the terms allocate the funds so that the government will receive \$24,491,213.80 plus interest, of which \$11,550.692.58 is restitution, and Florida will receive \$8,786.20 plus interest, of which \$4,393.10 is restitution. Unlike previous settlement agreements, the terms of this agreement do not state what specific allocation of the settlement funds apply to settle the FCA allegation involving the false certification on the PPP loan application. Past agreements have required the borrower to reimburse the Small Business Administration for paying a processing fee to the lender as well as the full balance of the loan. *See, e.g.,* Zen Solutions, Inc., discussed further [here](#).

This settlement agreement also states that the government and the numerous relators involved have not yet reached an agreement as to each relator's share of the recovery. Moreover, while the settlement agreement's terms contain typical release language, the terms state that two of the relator's claims against a non-party entity are reserved. Thus, there could be further developments unfolding in the future. To stay updated on these developing topics, check out Dorsey's [FCA Now](#) blog and [FCA Case Tracker](#) for the latest FCA and PPP fraud news.

[1] Although not stated in the Settlement Agreement, [publicly available data](#) shows that PPOA, LLC obtained a first draw PPP loan of \$5,978,709.00 on April 13, 2020.