

Report on Medicare Compliance Volume 33, Number 28. August 05, 2024

DOJ Offers Rewards for Tips About Corporate Fraud Against Private Payers

By Nina Youngstrom

To motivate people to report corporate crime, the U.S. Department of Justice (DOJ) Aug. 1 announced a whistleblower rewards program.^[1] DOJ is dangling dollars for original information on four types of criminal fraud, including fraud against private insurers.

Whistleblowers could be rewarded for nonpublic information they give to DOJ—including information they initially reported through an organization’s “internal whistleblower, legal or compliance procedures”—as long as they do it within 120 days of reporting internally, and it results in a successful prosecution and \$1 million in forfeiture.

“This is a game changer for enforcement and corporate accountability,” said attorney Mary Inman with Whistleblower Partners LLP. She said the Corporate Whistleblower Awards Pilot Program fills a gap left by the qui tam provisions of the False Claims Act (FCA), which only incentivize whistleblowers to report fraud against federal health care programs.

It follows on the heels of highly successful whistleblower rewards programs at five other federal agencies, including the Securities and Exchange Commission and Internal Revenue Service, Inman said. “They’re playing a game of catch up,” she said. “We’re delighted they’re doing that.” In cases where a health care organization, for example, is improperly billing both Medicare and private insurers, whistleblowers would be able to simultaneously file an FCA lawsuit and report the wrongdoing to the awards program. A version of that dynamic already exists under state laws in California and Illinois, which allow whistleblowers to bring civil lawsuits against entities for defrauding private insurers and collect a share of recoveries, Inman said. “All of the whistleblower attorneys who bring Medicare fraud claims will now bring a separate tip to DOJ when the types of health care fraud our clients are seeing negatively impact private insurers,” she said.

Impact May Be Limited

But the program’s impact will be limited by its design, said attorney Matthew Krueger with Foley & Lardner LLP. “I would characterize this as relatively narrow in its applicability.” The rewards only apply to tips that result in at least \$1 million in civil or criminal forfeiture of the perpetrator’s assets (not fines or penalties). But it still “creates additional risk” by giving whistleblowers a concrete incentive to bring information to the government, he said.

When DOJ first announced its plans to offer whistleblower awards, there was concern they would encourage employees to bypass compliance programs and go straight to the government, Krueger said. DOJ alleviated that concern by creating what it called “a narrow window for both whistleblowers and companies to report the same misconduct and remain eligible for potential benefits.” If the organization gets the whistleblower’s internal report and self-discloses to DOJ’s Criminal Division within 120 days and before DOJ contacts the organization, it will be eligible for DOJ’s corporate enforcement and self-disclosure policy (CEP) even though DOJ has already

heard from the whistleblower.^[2]

Even with that concession, the already-fraught decision to self-disclose is more complicated with the rewards program in the mix, Krueger noted. The organization must weigh the risk of an employee having the incentive to go to the government as it decides how fast to do its internal investigation and self-disclose under the CEP, which offers sharply reduced penalties and possibly escape from prosecution, while the clock is ticking.

However, DOJ sees an upside for compliance programs in the whistleblower awards program. “Providing individuals with incentives to report corporate crime may also motivate corporations to create more robust compliance programs that detect and deter criminal conduct, including by encouraging internal reporting of complaints,” the program states. In fact, the whistleblower’s reward could be increased for participating in their organization’s compliance program.

The only downside of the three-year reward program is the whistleblower reward would be “up to 30%” of the first \$100 million forfeited, Inman said. “That’s a real weakness,” she noted. “Whistleblowers come forward at enormous risk to themselves. If there’s no floor, the government could provide them with zero.”

Inman said a 2019 settlement with Skyline Urology in California gives a sense of how the whistleblower awards program may play out. Skyline Urology paid \$1.85 million to settle an FCA case over alleged improper use of modifier 25 and another \$250,000 in connection with California’s Insurance Fraud Prevention Act.^[3] DOJ “is piggybacking on what California and Illinois have already done,” she said. “If you’re a provider and you’re cheating Medicare, chances are you’re using the same scheme to defraud private insurers.”

Rewards Apply to Four Types of Violations

The rewards only apply to information about certain violations: “a. Violations by financial institutions, their insiders, or agents, including schemes involving money laundering, anti-money laundering compliance violations, registration of money transmitting businesses, and fraud statutes, and fraud against or non-compliance with financial institution regulators. b. Violations related to foreign corruption and bribery by, through, or related to companies, including violations of the Foreign Corrupt Practices Act, violations of the Foreign Extortion Prevention Act, and violations of the money laundering statutes. c. Violations committed by or through companies related to the payment of bribes or kickbacks to domestic public officials, including but not limited to federal, state, territorial, or local elected or appointed officials and officers or employees of any government department or agency. d. Violations related to (a) federal health care offenses and related crimes involving private or other non-public health care benefit programs, where the overwhelming majority of claims are submitted to private or other non-public health care benefit programs, (b) fraud against patients, investors, and other non-governmental entities in the health care industry, where the overwhelming majority of the actual or intended loss was to patients, investors, and other non-governmental entities, and (c) any other federal violations involving conduct related to health care not covered by the Federal False Claims Act, 31 U.S.C. § 3729, et seq.”

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¹ U.S. Department of Justice, “Department of Justice Corporate Whistleblower Awards Pilot Program,” August 1, 2024, <https://bit.ly/3A8LssK>

² Nina Youngstrom, “In New Policy, DOJ Spells Out Rewards for Self-Disclosure, Reinforces Compliance Programs,” *Report on Medicare Compliance* 32, no. 3 (January 23, 2023), <https://bit.ly/3ZyvI9Z>.

³ Constantine Cannon, “\$2.1 Million Whistleblower Settlement with Skyline Urology Resolves Allegations of Improper Unbundling Fraud,” March 1, 2019, <https://bit.ly/3A5qXgt>.

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