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Agenda

- CARES Act Considerations Overview
- Early Enforcement Efforts
- Focus on the PRF
- Audit Priorities
- Audit Preparation and Response
- Potential Consequences and Risk Mitigation
- Closing Thoughts and Questions

CARES Act Considerations Overview



Relevant CARES Act Funds and Considerations

- CARES Act over \$2 trillion across all sectors of the economy
- Paycheck Protection Program
- Provider Relief Fund
- Programs are in the audit and enforcement phases
- Government is committed to post-pandemic enforcement- but how?
- Terms and Conditions of the programs
- Single Audit Requirement applicability to the PRF, compliance
- Confusion and shifting guidance
- Breadth and alacrity; this was new and in a global emergency
- Amount of money at issue

Early CARES Act Enforcement Efforts



CARES Act Enforcement – Low Hanging Fruit



Colorado Physician Charged for Misappropriating Thousands from Three Different COVID Relief Programs

Inflated | Wednesday in Denver charging a Colorado man with stealing nearly \$300,000 in government COVID relief programs and with making false statements in connection with bankruptcy

ments, Francis F. Joseph, §6, of Highlands Ranch, allegedly transferred approximately \$18,000 in m a medical clinic's account into his personal bank account, after which he spent the money on, which are also made improvements. The stolen funds came from two programs that were designed to aid the COVID-19 pandemic – the Accelerated and Advance Payment Program and the Provider Relief

Payment Program provides necessary finds in national emergencies in order to accelerate
expenses

a provider. The Provider Relief Fund, through which \$50 billion sat allocated to provider
the economic effects resulting on provider make from the composition of the composition of

Today's indictment constitutes the nation's second set of criminal charges related to the misuse of Provider Relief Fund moneys and the first time that charges have been brought in connection with fraud on the Accelerated and Advance Payment Program.

The indictionent further alleges that following his termination from the clinic, Joseph applied for a \$170,000 journ under the Psychoic Protection Program (PPP) on behalf of the medical practice, which he thus directed into his personal bank secount. Finally, the indictionent alleges that Joseph filed for bankruper following his termination and volumited documents containing materials.

In April 2020, Congress authorized over \$300 billion in additional PPP qualifying small business and other organizations to receive loans with a propercet. Businesse insut use PPP loan proceeds for payroll costs, interest the interest and principal to be forgiven if businesses spend the proceeds or at least a certain percentage of the loan towards payroll expenses.

of funds from the clinic in connection with that proceeding.

Joseph is charged with theft in connection with health care, theft of government uncover the recognition to the statement in connection with a bankruptcy proceeding, Joseph is acheolide before U.S. Allgainer Joseph S. Kan Corner of the U.S. Distinct Court of Companies of Companies and Court of Cou

Acting Assistant Attorney General Nicholas L. McQuaid of the Justice Department's Criminal Division; Special Agent in Charge Curt Muller of the U.S. Department of Health and Human Services' Office of Inappetor General; HHS-OIG Kanasa City Region; and Special Agent in Charge Weston King of the U.S. Small Business Administrator's Office of Inspector

False statement re: not being engaged in unlawful activity when applying for loan

U.S. Attorneys » Southern District of New York » News » Press Releases

Department of Justice

U.S. Attorney's Office

Southern District of New York

FOR IMMEDIATE RELEASE

Tuesday Sentember 14, 2023

Ophthalmologist Pleads Guilty To Seven-Year Healthcare Fraud Scheme And To Defrauding SBA Program Intended To Help Small Businesses During COVID-10 Pandemic

Audrey Strauss, the United States Attorney for the Southern District of New York, announced that AMEET GOYAL, an ophthalmologist in Ry. New York, jed guilly yesterday to perpetrating a seven-year healthcare fraud scheme by falsely billing for millions of dollars of protection of the processing the seven-year to fraudiently obtaining two Government-nuaranteed loans intended.

healthcare fraud scheme by falsely billing for millions of dollars of protor fraudulently obtaining two Government-guaranteed loans intended COVID-19 pandemic while facing charges on pretrial release for the hi guilty before It's. District dudge Cathly Seibel to all charges in a sicce-of-

U.S. AT Pake dipatries of Goyal was an experienced by doctor who became blinded of patries who trusted him to beal their eyes. He grossly overbilled minor popular distribution of the growth of the g

According to the allegations contained in the Indictment, court filings, and statements made during court proceedings:

At all relevant times, GOYAL owned and operated the ophthalmology practice Ameet Goyal M.D. P.C., doding business at Rye Eye Associates, with offices in Rye, Mt. Kisco, and Wappingers Falls, New York, and Greenwich, Connecticutus, and the conference of the Connecticutus of the Conn

besidness fraid by con Test pricing and in in insurance companies. Test pricing and in in justice as complex, higher-pay insurance companies. Test pricing and in in justice and in the desired procedure medical records, author that the desired pricing and the state of the pricing and the pricing and the pricing and the state of the pricing and the pr

refused to comply. GO billed charges, and initiates are constructed by the construction of those falls charges. Recently, and the construction of those falls charges. Recently, and the construction of the c

insurance programs. Natural processing the programs of the programs of the processing the processing the processing the processing the processing practice to close the residence of the processing practice to the processing pr

surgeries, as billed, paid the Practice approximately \$1,400 on average from a combination of insurance and patient out-of-pocket payments. GOVAL also upcoded certain superficial procedures as an excission and repair of evelid, a two of higher-paying evelid surgery involving reconstruction or removal of certain JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Wednesday, July 29, 2020

Florida Man Charged with COVID Relief Fraud, Health Care Fraud and Money Laundering

A Florida man has been charged regarding allegations that he fraudulently obtained a Psycheck Protection Program (PPP) bona and an Economic Injury Distante Lona (EDL), and dath her or-chestrated a conspiracy to submit false and fraudulent claims for reimbursement to Medicare and Cars/Cedit, and to defraud his own patients by charging them thousands of dollars for chiospectic services under false pretenses.

ral Brian Rabbitt of the Justice Department's Criminal Division, U.S. Attorney Ariana
District of Florida, Special Agent in Charge George L. Pite of the FETs Miami Field Office,
peartment of Health and Human Services-Office of the Inspect or General (IHIS Offic), and
Cupperbuschof the Small Business Administration's Office of the Inspector General (IREA-

Dennis Nobbe, 65, of Mianii, Florida, was charged by oriminal complaint, unsealed today upon his arraw, in the Southern District of Florida with wire freud beath care frout conspiracy to commit health care freud and wire frout making faise statements to a financial institution; money lumdering; and conspiracy to commit money lumdering. He is expected to make his initial appearance before U.S. Magistrate Audie 2-holn O Sallivan at 1 pm. EST Good.

The complaint alleges that Nobbe, a chiropractor, orchestrated a scheme to exploit his patients for financial gain through a chird tradical expenses. To conceal his role in the scheme, that at excusts in their names. Nobbe then encouraged into the conceal his role in the other concealing of the conc

pay credit card

liars to these credit cards for services that he never, or only dition, Nobbe bribed a physician to submit claims to Medicare lighle to submit the claims himself, and would not have been be and other physicians also allegedly conspired to launder the

debt or purchase

al Nobbe's involvement in the scheme, and sought to use of shell companies and sham contracts.

a PPP and EIDL loans intended to provide COVID relief,

luxury goods (v/CAES) Act is a federal law enacted March op. It is designed to of Americans who are suffering the economic effects resulting from the of Americans who are suffering the economic effects resulting from the case of the c

pandemic.

The PPP allows qualifying small businesses and other organizations to receive loans with a maturity of two years and an interest rate of one percent. Businesses must use PPP loan proceeds for payroll costs, interest on mortgages, rent and

Inter FFF allows quanting small businessess and other organizations to receive be onto with a measurity or two spars and an interest rate of one percent. Businesses must use PFP loan proceeds for payroll costs, interest on mortgages, ent and utilities. The PFP allows the interest and principal to be forgiven if businesses spend the proceeds on these expenses within a set time period and use at least a certain percentage of the loan towards payroll expensive payroll.

The EIDL program is designed to provide economic relief to small businesses that are currently experiencing a temporary loss of revenue. EIDL proceeds can be used to cover a wide array of working capital and normal operating expenses, such continuation of health care benefits, rent, utilities and fixed debt paraments. If an applicant also obtains a loan under the

CARES Act Enforcement - Ongoing

- By Q1 2022:
 - Criminal charges against over 1000 defendants
 - Alleged losses exceeding \$1.1 billion
 - Seizure of EIDL proceeds
 - Over 240 civil investigations of over 1800 individuals and entities
 - Alleged loans totaling over \$6 billion
- What's on the horizon:
 - Audits
 - Enforcement Actions
 - FCA cases. . .?

The Provider Relief Fund

- Three sets of distributions totaling \$178 billion
 - Four phases of General Distributions
 - Targeted Distributions
 - *Uninsured and Underinsured Programs*
- Terms and Conditions restrict eligibility and use of the funds
- These are mandatory, even if the funds were not applied for
- Reporting obligations through the PRF Reporting Portal
 - In 2022 HRSA notified providers who were non-compliant with reporting policies and asked thousands of them to return funds

Internal and External Audits

Reporting Portal Terms and Conditions of the Program

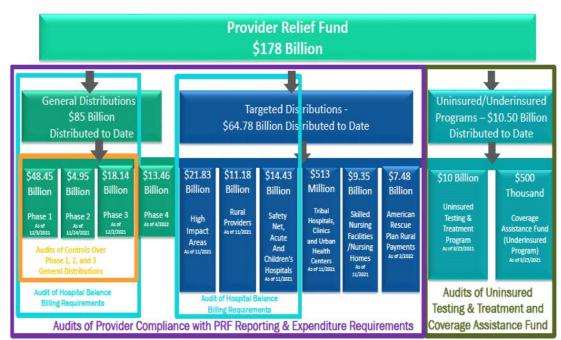
Internal or Single Audits Recipients of amounts in excess of \$750,000 Applicability to the PRF

HHS OIG retains the right to externally audit Any program, any recipient, any amount

Audits and Audit Priorities



Audit Coverage of the Provider Relief Fund



*\$17.72 billion in funds are undistributed.

Anticipated Auditors

- US Department of Health and Human Services (HHS) Office of Inspector General (OIG)
- Office of Management and Budget (OMB) Single Audits
- HRSA or HRSA contractors involvement such as with targeted distributions reallocated to parent company by subsidiary

Audit Readiness – OMB

- Non-profit, government and institutes of higher education once Federal expenditures reach \$750,000 in the auditee's fiscal year
- Commercial entities once they receive Federal awards of \$750,000 in the auditee's fiscal year, if the single audit option is selected under 45 CFR 75.501(i)
- Be familiar with HRSA FAQs for the program
- HRSA has not developed the reporting matrix which will drive the triggers for Single Audits

PRF Reporting Requirements

PRF Amounts	Reporting Obligation
Under \$10,000	No reporting obligation, <i>BUT</i> HHS reserves right to require report later
\$10,000+ retained	Must file reports
\$10,000-\$499,999	Must classify expenses as general and administrative (G&A) or other healthcare-related expenses
>\$500,000	More detailed reports required

OAS Audit Work Plan

Announced or Revised	Agency	Title	Component	Report Number(s)
May 2021	Health Resources and Services Administration	Audit of CARES Act Provider Relief Funds— Payments to Health Care Providers That Applied for General Distribution Under Phases 1, 2, and 3	Office of Audit Services	W-00-21-35873
October 2020	Health Resources and Services Administration	Audit of HRSA's Controls Over Medicare Providers' Compliance with the Attestation, Submitted-Revenue-Information, and Quarterly Use-of-Funds Reporting Requirements Related to the \$50 Billion General Distribution of the Provider Relief Fund	Office of Audit Services	W-00-21-59060
August 2020	Centers for Medicare and Medicaid Services	Audit of CARES Act Provider Relief Funds— General and Targeted Distributions to Hospitals	Office of Audit Services	W-00-20-35855
May 2020	OS	Audit of CARES Act Provider Relief Funds— Distribution of \$50 Billion to Health Care Providers	Office of Audit Services	W-00-20-35847

Auditing the PRF

- HHS' calculation of PRF payments and distributions to eligible providers
- HRSA's controls over requirements: attestation, submitted revenue information, and quarterly-reporting requirements
- Providers' adherence to the post-payment reporting requirements
- HRSA's Covid-19 Uninsured program

CARES Act Criteria in the Context of an Audit



Appropriate Uses of PRF

- Expenses
 - General & Administrative
 - Includes expenses such as mortgage/rent, personnel, and operations.
 - Other healthcare expenses
 - Includes expenses such as supplies, PPE, and equipment.

Inappropriate Uses of PRF

- Lobbying
- Executive Compensation above \$197,300
- Abortion services, with limited exceptions
- Embryo research
- Gun control efforts
- Promotion of legalization of controlled substances
- Pornography
- **ACORN funding**
- Funding for needle exchange programs
- Per FAQ: Repayment of CMS Advanced Accelerated Payments

PRF Reporting Lost Revenue

- Difference between actual patient care revenues/net charges 2019 vs. 2020
- Difference between 2020 budgeted vs. 2020 actual patient care revenue
- "Reasonable alternative methodologies"

Office of Investigations

- Initial cases, price gouging and hoarding of supplies
- Shifted to bad actors
- Similar fraud schemes to previous cases (e.g., billing for services not rendered)

Audit Preparation and Response



PRF Audit Preparation – Best Practices

- Conservative approach: return/reject funds
- Maintain detailed documentation
 - Expenses (G&A, other healthcare expenses)
 - Lost Revenues (methodology of how calculated, budget approval records, etc.)
 - Retain for 3 years from date of final expenditure
 - Maintain it in one centralized location.
- Report
 - Timeliness of report (3-month extension possible for OMB Single Audit)
 - Apply other sources of funds before PRF ("payment of last resort")
 - Interest earned on PRF

PRF Preparation – Best Practices

- Stay current on HHS Guidance/FAQs
- Assign a PRF owner/team to manage documentation, allocation, and response
- Consider a mock audit to test audit readiness
- Memorialize conversations and meetings including documentation of decisions made and guidance that was provided
- Have a plan/defense strategy
- Legal counsel

Single Audits – Uniform Guidance Audit Basics

- Determines whether financial statements of the auditee are represented fairly in all material aspects in accordance with generally accepted accounting principles
- Uses Compliance Supplement to review auditee's internal controls over other programs
- Determines whether auditee has complied with federal statutes, regulations and terms of the federal awards

Single Audits – Uniform Guidance Audit Basics

- Scope
 - Financial statements
 - Schedule of expenditures of federal awards
 - Compliance with federal awards, including controls over compliance
- Timing
 - Deadline for submission is the earlier of 30 calendar days after receipt of the auditor's reports or nine months after the end of the audit period
 - COVID Impact: Six-month extensions granted for fiscal year-ends through June 30, 2021; no further extensions available at this time
 - Performed annually, unless certain criteria are met for biennial audits

Single Audits – Preparation

At year-end

- Gather and summarize federal grant information
- Create a detailed draft of the SEFA
- Review written policies and procedures
- Prepare internal control documentation and consider documentary evidence of controls

Throughout the year

- Draft written policies and procedures and update for changes in systems, processes, and personnel
- Keep informed of the latest standards, guidance, and developments
- Identify and address issues and problem areas in advance
- Review written policies and procedures
- Continue regular risk assessment and monitoring

Single Audits – Internal Controls Components

- Internal control over compliance requirements for federal programs must establish:
 - Processes to provide reasonable assurance that a non-federal entity is managing federal awards in compliance with federal statutes, regulations, and the terms and conditions of the federal award
- Objectives of the control environment
 - Transactions are properly recorded and accounted for
 - Transactions are executed in compliance with federal statutes, regulations, and the terms and conditions of the federal award
 - Safeguarding of property and assets
 - Reliable reporting

Single Audits – Management Responsibilities

- Establish and maintain an effective system of internal control over federal awards
- Comply with U.S. Constitution, federal statutes, regulations, and the terms and conditions of the federal awards
- Evaluate and monitor the entity's compliance with federal statutes, regulations, and the terms and conditions of federal awards
- Take prompt action when instances of noncompliance are identified includes any noncompliance identified in audit findings
- Take reasonable measures to safeguard PPI/PHI or other sensitive information

Single Audits – Establish Specific Controls

- **New Grants**
 - Identify control objective
 - Understand any applicable business processes
 - Evaluate risks of what could go wrong
 - Understand the controls available or investigate new controls
 - Design or implement existing controls and place into operation
 - Monitor and adjust controls as necessary
- Additional considerations
 - Engage external parties
 - Large vs. small entities
 - Benefits and costs

Single Audits – Internal Control Best Practices

- Adoption of Green Book standards for internal control in the federal government
- COSO Internal Control Integrated Framework
- Communications with awarding agency
- Establish summaries of compliance items for each award
 - Document entity-wide and specific controls

Potential Consequences and Risk Mitigation



Anticipated Audit Risk Areas for the PRF

- Reporting non-compliance
- Ineligible recipients
- Ineligible expenses
- Improperly calculated lost revenues
 - Budget approval and certification requirements
 - Bogus alternative methodologies
 - Failure to report patient care revenues
- Expenses paid or payable by other sources (e.g., PPP loans, FEMA, insurance)
- Balance billing
- Changes of ownership
- Unused funds awaiting HHS quidance re: process to return

Anticipated Consequences

- "Recoupment and other legal action" for inaccurate information provided to HHS
- For intentional wrongdoing in payment applications or reporting:
 - Criminal: restitution + possible imprisonment
 - FCA or other civil penalties
 - Administrative penalties
 - Revocation of Medicare billing privileges
 - Exclusion from federal programs
- False Claims Act liability: attestation + materiality in PRF Terms and Conditions

Anticipated Consequences – Single Audit

- Repay grant awards
- Suspension of grant awards
- Categorized as a "high-risk auditee" and subject to additional audits
- Findings are public information

Real Life Examples – Criminal

- First charge of misappropriation of PRF Michigan 2021
 - Theft of Government property
 - Allegedly received funds for home health agency that had never operated during the pandemic, and used funds for personal use
- June 2021 California
 - Theft of Government property
 - Allegedly kept auto-deposited PRF funds even though home health agency was defunct, in violation of terms and conditions
- March 2022 Tennessee
 - Theft of Government property
 - Former owner of defunct hospice allegedly received PRF money, paid himself, submitted a false attestation
- April 2022 California
 - Theft of Government property
 - Allegedly kept auto-deposited PRF funds even though home health agency was defunct,

in violation of terms and conditions

Real Life Examples – Civil

- September 2021 Texas
 - False attestation in reporting portal about Medicare billing privileges
 - **Civil Monetary Penalties**
- September 2021 Florida
 - False attestation in reporting portal about Medicare billing privileges
 - **Civil Monetary Penalties**
- January 2022 California
 - False attestation that physician was providing care for COVID patients
 - **Civil Monetary Penalties**

MITIGATING RISK AND SURVIVING SCRUTINY

- DOJ has indicated it does not plan to pursue
 - inadvertent technical mistakes
 - honest misunderstandings of rules, terms and conditions, or certification requirements
 - cases against entities who access CARES Act programs in good faith and in demonstrably considered compliance with the rules
- But DOJ has signaled it will vigorously enforce the FCA to combat CARES Act fraud
- Build a record demonstrating good faith
- Get skilled legal counsel involved early
- Beware of investigations proceeding on dual tracks
- Remember the applicable statutes of limitation

Closing Thoughts and Questions



Questions

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