

Health Law & Business News

Coronavirus False Claims Task Force Urged at Justice Department

By Lydia Wheeler

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- People will try to profit off a disaster
 - Barr asked to make allegations of false claims a priority
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A whistleblower attorney and advocate is calling on Attorney General William Barr to warn health-care providers against using the new coronavirus to pad their pockets.

Stephen Kohn, founding partner of Kohn Kohn & Colapinto LLP who chairs the National Whistleblower Center's board of directors, asked Barr in a letter Monday to create a task force at the Justice Department to monitor and investigate False Claims Act allegations related to the Covid-19 outbreak.

"There is a group of people who will profit from disasters illegally and they're despicable, but they're out there," Kohn told Bloomberg Law.

Kohn said in the letter that the DOJ should take "prompt and effective action" to protect against fraud in Medicare, Medicaid, and other government sponsored health-care programs.

Establishing a task force and aggressively investigating fraud claims "can send a message to all persons involved in fighting the coronavirus that they must act honestly and ethically in their administration of these critical programs," he told Barr.

President Trump said Saturday the emergency declaration he issued last week will free up more than \$50 billion in disaster relief funds. Congress already enacted legislation to provide \$8.3 billion in emergency funds to combat the new cases of Covid-19. Medicare alone was authorized to spend \$500 million on telehealth programs.

If health-care workers on the front lines see a provider manipulating the billions of dollars coming into the system to fight the pandemic, Kohn said they have the right to report it.

The old saying is "if you see something, say something," he said. "Well guess what? The law backs that up."

Protections in Place

Congress enacted the False Claims Act in 1863 out of concern that contractors supplying goods to the Union Army during the Civil War were defrauding the government, according to the Justice Department. The law allows private citizens to file lawsuits on behalf of the government when they believe a person or business has filed a false claim for federal funding.

The law specifically covers claims for Medicaid and Medicare programs, which provide critical care for older adults—those with the highest risk of contracting the deadly virus, Kohn's firm said on a frequently asked questions webpage about coronavirus whistleblower protections.

Most nursing homes are financed in large part through Medicaid, and False Claims Act litigation often arises when reimbursement claims are submitted for services that were never rendered. That's already an area the DOJ is cracking down on.

The DOJ announced March 3 the launch of a National Nursing Home Initiative to go after owners and operators who put profits before patients. The DOJ didn't respond to a request for comment about whether it expects to see more whistleblower lawsuits filed as a result of the pandemic.

Part of the emergency spending bill Trump signed March 6 gives the Centers for Medicare and Medicaid Services the authority to temporarily waive certain federal requirements for health-care providers to bill Medicare for telehealth services.

Telehealth is an area where attorneys think False Claims Act cases could pop up as a result of the new coronavirus.

"Often times in telehealth fraud cases, you'll see providers who don't meet all of the requirements billing for services, providers who are billing for unnecessary services in telehealth—all these issues can creep up again here when you're trying to make, in this case for good reasons, telehealth more available," said Habib Ilahi, a partner at Stinson LLP and former federal prosecutor with the fraud section of the DOJ's Civil Division.

Health and Safety

Ilahi said he also sees the potential for various public health and safety law violations to occur, which could be reported to the Occupational Safety and Health Administration.

The Occupational Safety and Health Act of 1970 will protect workers who report such violations from being retaliated against by their employer, Ilahi said.

Federal employees who don't get proper training or medical gear can also file complaints with the U.S. Office of Special Counsel. The OSC investigates wrongdoing that grossly wastes funding, creates a danger to public health and safety, or violates a law, rule or regulation. Federal workers are protected from retaliation under the Whistleblower Protection Act.

As for False Claims Act cases, Kohn asked Barr to prioritize all cases related to the new coronavirus, civilly and criminally prosecute fraudsters, and respond to his letter by March 23.

"There needs to be someone in a centralized location looking at what's coming in, prioritizing cases, determining if there is a pattern," he said in an interview. "Right now these cases can come into a local U.S. attorney's office anywhere in the country."

To contact the reporter on this story: Lydia Wheeler in Washington at lwheeler@bloomberglaw.com

To contact the editors responsible for this story: Fawn Johnson at fjohnson@bloomberglaw.com; Alexis Kramer at akramer@bloomberglaw.com

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