

The Expanding Role of the False Claims Act in Civil Rights and Healthcare Enforcement

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On June 11, 2025, Assistant U.S. Attorney General Brett Shumate issued a memorandum to all Civil Division employees instructing them on new enforcement priorities (the “June Memorandum”). Among other priorities, the June Memorandum details that the Civil Division will “aggressively” investigate and pursue claims under the False Claims Act (FCA) “against recipients of federal funds that knowingly violate civil rights laws” and “healthcare providers that bill the federal government for impermissible services.” The June Memorandum notes that this includes “providers that attempt to evade state bans on gender dysphoria treatments by knowingly submitting claims to Medicaid with false diagnosis codes.” As evidenced by the Department of Justice’s (DOJ) 2025 National Health Care Fraud Takedown in June, the Administration has focused on FCA enforcement, and now seeks to utilize the FCA as a tool to accomplish its objectives. Following the release of the June Memorandum, on July 2, 2025, the DOJ-HHS False Claims Act Working Group was announced, which “encourages whistleblowers to identify and report violations of the federal False Claims Act involving priority enforcement areas.”

The June Memorandum comes in response to President Trump’s January 21, 2025 Executive Order entitled Ending Illegal Discrimination and Restoring Merit-Based Opportunity, which in part ordered all executive departments and agencies “to enforce our longstanding civil-rights laws and to combat illegal private-sector DEI preferences, mandates, policies, programs, and activities.” The Executive Order stated that “critical and influential institutions of American society, including the Federal Government, major corporations, financial institutions, the medical industry, large commercial airlines, law enforcement agencies, and institutions of higher education have adopted and actively use dangerous, demeaning, and immoral race- and sex-based preferences under the guise of so-called ‘diversity, equity, and inclusion’ (DEI) or ‘diversity, equity, inclusion, and accessibility’ (DEIA) that can violate the civil-rights laws of this Nation.”

In furtherance of the Executive Order, on February 5, 2025, U.S. Attorney General Bondi issued a memorandum entitled “Eliminating Internal Discriminatory Practices” to all Department of Justice employees (the “February Memorandum”). In part, the February Memorandum directed each Department of Justice component to recommend actions to align “enforcement activities, contracts (including set-asides), grants, consent orders, and litigating positions with the requirement of equal dignity and respect.”

On May 19, 2025, in support of these efforts, the DOJ announced the Civil Rights Fraud Initiative (the “Initiative”). The Initiative “will utilize the False Claims Act to investigate and, as appropriate, pursue claims against any recipient of federal funds that knowingly violates federal civil rights laws.” In announcing the Initiative, Attorney General Bondi stated that “[i]nstitutions that take federal money only to allow anti-Semitism and promote divisive DEI policies are putting their access to federal funds at risk.”

With these priorities, the Administration’s approach to FCA investigations and enforcement marks a significant and novel shift. While the Administration will certainly continue to focus on more traditional FCA actions such as healthcare fraud and COVID-related fraud, future investigations and enforcement will likely target civil rights enforcement and DEI programs. The DOJ has also moved quickly to utilize the FCA to investigate medical professionals, announcing on July 9, 2025 that it had issued more than 20 subpoenas to doctors and clinics that it alleges perform “transgender medical procedures on children.” The announcement notes that the investigations include inquiries into “healthcare fraud, false statements, and more.”

The Administration is already facing a recent challenge by various state attorneys generals who argue that the DOJ has “weaponized” the FCA. Given the Administration’s utilization of the FCA in novel ways, it’s likely that additional challenges will be brought. Providers, individuals, and companies who submit claims or have created DEI programs in the past should take active steps to ensure compliance and continue to confirm that any government claims and related records are well-documented and accurate. The FCA can be tremendously powerful, allowing for the recovery of significant civil damages and ultimately, potential criminal liability. Given that the FCA allows for suits by private whistleblowers, all parties should be cautious in submission and billing practices.

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