

Report on Medicare Compliance Volume 32, Number 6. February 13, 2023 FCA Recoveries Drop; Lawyers See Other Data as More Significant

By Nina Youngstrom

Settlements and recoveries from the False Claims Act (FCA) yielded \$2.2 billion in the fiscal year ending Sept. 30, the Department of Justice (DOJ) said Feb. 7.^[1] Health care cases made up the lion's share of the recoveries—\$1.7 billion, with about half of the dollars coming from a whistleblower-driven FCA settlement with the pharmaceutical manufacturer Biogen.^[2] Although \$2.2 billion is a significant drop from the \$5.6 billion recovered the previous year, attorneys say false claims enforcement is going strong, and there's more telling information in the data than the total dollar amount. DOJ also noted the number of settlements and judgments (351) is the second highest ever.

What was striking is the 40% increase in the number of matters that DOJ initiated on its own instead of taking the ball from whistleblowers—296 last year, up from 212 in 2021, said Matthew Krueger, former U.S. Attorney for the Eastern District of Wisconsin. "That's really remarkable," said Krueger, with Foley & Lardner LLP in Milwaukee, Wisconsin. The 40% increase is across all industries. It probably means DOJ is pursuing more cases based on data analytics, tips from law enforcement partners and COVID-19 relief fund (e.g., Provider Relief Fund, Paycheck Protection Program) audits or investigations that don't originate with whistleblowers, Krueger said.

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