

## QUI TAM QUARTERLY

### RISKY BUSINESS: HEALTH CARE INVESTMENTS POSE ACUTE FALSE CLAIMS ACT RISK FOR PRIVATE EQUITY

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This article analyzes emerging risks to PE firms that invest in the health care sector by examining the current enforcement landscape and significant FCA litigation; identifies key factors that increase FCA risk for PE firms in the health care space and risk related to participation in COVID-19 stimulus programs, like the Paycheck Protection Program (PPP) and the Provider Relief Fund (PRF); and concludes with a discussion of best practices PE firms should consider in order to minimize FCA liability exposure.

#### Key Takeaways Include:

1. FCA enforcement actions initiated by relators and the U.S. Department of Justice (DOJ) against PE firms that invest in health care are on the rise.
2. Given the health care industry's complex regulatory structures, PE firms sometimes do not fully appreciate the extensive FCA-related risks associated with their investments in health care portfolio companies.
3. Key areas of focus have emerged through recent FCA actions against PE firms related to their investments in health care companies, including the extent of the PE firm's involvement in the portfolio company's operations; the firm's knowledge of applicable health care laws and regulations, and potential conflicts between the firm's investment goals and legal compliance. Best practices for PE firms to avoid, or mitigate against, potential FCA exposure including extensive due diligence and knowledge of the portfolio company's business; development of a robust corporate compliance program tailored specifically to the portfolio company; awareness of, and responsiveness to, industry "red flags"; and consultation with experienced health care counsel.

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Qui Tam Quarterly is a quarterly publication authored by members of the [health care fraud and abuse team](#) highlighting emerging and pressing issues in health care fraud and abuse, including litigation and governmental investigations involving the False Claims Act, the Stark Law, the Anti-Kickback Statute, and other health care fraud related statutes.

Members of [our team](#) are regular contributors to [Triage: Rapid Legal Lessons for Busy Health Care Professionals](#), a podcast created by K&L Gates to inform our clients and friends of the firm about the latest developments in health law. Subscribe to Triage through [Apple Podcasts](#), [Google Podcasts](#), or [Spotify](#).

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