Learning From 2025 FCA Trends Targeting PE In Healthcare

By **Lisa Re** (December 16, 2025)

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The ethos of healthcare fraud enforcement is holding accountable the person or entity responsible for the fraud. When I was the U.S. Department of Health and Human Services' representative for False Claims Act cases, the questions I routinely asked were: Why did the fraud occur? Who orchestrated the conduct? How do we know this will not happen again?

Since 2006, private equity interests have invested $1 trillion across almost every sector of the U.S. healthcare industry.[1] Many states have corporate practice of medicine laws that prohibit nonphysicians or corporations from owning or controlling healthcare entities.

Often, a management services organization is created to allow the PE firm to acquire nonclinical assets, e.g., billing systems, information technology, human resources and facilities, and provide management services, while clinicians retain ownership of the entity itself. This provides a legally compliant structure for investment and control.

The capital infusion often upgrades IT and physical infrastructure and yields more efficient business operations, enhanced bargaining power and expanded access to care and lifesaving treatments.[2]

If the PE investor's short-term goal, however, is to take all the value from the entity without regard to patient care, the results can be disastrous. To illustrate, this year, several Pennsylvania hospitals, many of them in rural areas,[3] shuttered their doors and filed for bankruptcy after PE investors, Stewart Health Care and Prospect Medical, paid hundreds of millions of dollars in dividends to equity holders when the hospitals were not solvent.[4]

As a result, one suburb lost its only trauma center, and patients there are facing yearlong waits for doctor's appointments.[5] State and local governments paid millions of dollars to rescue the hospitals. Stewart Health Care and its executives now face $3.4 billion in claims in bankruptcy court for their mismanagement of the hospitals.[6]

Government scrutiny of PE in healthcare is intensifying, and aggressive fraud enforcement through federal and state False Claims Acts against PE investors will likely escalate.

Beginning Jan. 1, 2026, new laws in Oregon and California will directly affect PE operations. This year, 17 states introduced or passed legislation related to PE ownership in healthcare — signaling a nationwide trend. The breadth and scope of these regulations underscore the government's focus on PE and the urgency of compliance.

Current Landscape of Federal and State False Claims Enforcement

Federal Enforcement

The federal FCA imposes liability, in part, on any person who knowingly presents, or causes to be presented, false or fraudulent claims to the U.S. for payment.[7] Monetary liability may consist of up to treble damages plus additional penalties.

The U.S. Department of Justice administers the federal FCA and, in fiscal year 2024, recovered over $2.9 billion in settlements and judgments, $1.67 billion — or 57% — of which related to the healthcare industry.[8]

Causation at the Heart of Enforcement

For FCA liability to attach, the actor must present, or cause to be presented, the false claim for government payment. In other words, the person's actions must be responsible for the misconduct. The closer the person is to the misconduct, the more potential liability they face.

For example, it is easier to prove that a patient's harm was caused by a physician's treatment plan than it is to prove the harm was caused by an owner that implemented policies related to patient care.

Healthcare fraud encompasses a wide range of conduct, such as violating billing rules by upcoding, billing for services not provided, ordering or prescribing more medical care than the patient needs, or violations of the Anti-Kickback Statute or physician self-referral laws.

Historically, owners, investors and consultants have felt protected from FCA liability because they believed their actions to increase profitability were too attenuated to cause the false claim submission within the meaning of the FCA.

Yet over the last decade, the DOJ and relators have pushed to expand liability to owners and investors whose financial pressures or policies result in financial fraud. Federal FCA

enforcement has increasingly targeted PE entities by assigning false claims liability to upstream actors who take a more hands-on or controlling approach over their portfolio of healthcare entities.

The following types of conduct resulted in FCA liability for indirect providers, such as owners, investors or consultants: active participation in the fraud, failure to correct identified fraud, operational control of the asset, or advice that leads to fraud.

Examples of Liability Due to Actual Knowledge of the Fraud

- In 2016, Holiday Acquisition Corp. and Fortress Investment Group LLC, entered into an $8.86 million FCA settlement related to alleged fraudulent Veteran Affairs claims. The investment company knowingly assisted veterans or their surviving spouses in completing and submitting false claims for ineligible veterans, and then failed to provide the required services.[9]
- The Gores Group, a PE company, contributed $1.5 million to an FCA settlement for off-label promotion allegations. After acquiring Therakos in 2012, The Gore Group allegedly allowed the company to continue improper sales and promotion practices, which the government alleges caused false claims to be submitted to federal healthcare programs.[10]
- In 2019, Riordan Lewis & Haden Inc., a PE firm that managed a pharmacy company, contributed to a $21 million settlement after DOJ alleged the firm knew of, and financed, kickback payments to marketers.[11]
- In 2023, PE company Belhealth Investment Partners paid a $9 million settlement related to unlawfully distributed Subsys prescriptions by its portfolio company.[12] Belhealth allegedly directed the unlawful marketing practices that included off-label marketing, misbranding and paying kickbacks to physicians.[13] The relator alleged the pharmacy was "under direct instruction, strategic planning, funding, and control" of Belhealth.[14]

Liability Due to Fraud Discovered During Due Diligence

- In 2021, Ancor Holdings LP, a PE firm, paid $1.8 million to resolve claims that it discovered a portfolio company's kickback scheme during due diligence, yet allowed the fraudulent conduct to continue once it entered into a management agreement with the company.[15]

- In 2021, HIG Growth Partners LLC and HIG Capital LCC, owners of South Bay Mental Health Center Inc., paid $25 million for allegedly causing fraudulent claims to the state's Medicaid program. During due diligence, HIG discovered that South Bay provided unlicensed, unqualified and unsupervised services and caused false or fraudulent claims to be submitted to Massachusetts's Medicaid program. The U.S. District Court for the District of Massachusetts noted that "HIG had the power to fix the regulatory violations which caused the presentation of false claims but failed to do so."[16]

Liability Arising From Operational Control

In denying a motion for summary judgment, the U.S. District Court for the Eastern District of Pennsylvania noted in U.S. v. Kindred Healthcare Inc. in 2020 that "a defendant may be liable under the FCA if it implements a policy that causes others to present false claims."[17]

The relator alleged that because the owner of a nursing home had a policy to admit high acuity patients and did not properly staff the facilities to provide care, the subsequent false claims were "a normal consequence of the situation created by" the owner.[18]

The parent company's potential liability stemmed from its control over the facility: The owner controlled staffing and census goals, overrode the decisions of clinical staff, and controlled reimbursement.[19] The court further held the alter ego theory of liability applied because the parent exerted pervasive and continual control over the asset.[20] The case settled for an undisclosed amount of money.[21]

Liability From Advising on Fraudulent Conduct

The 2024 McKinsey settlement, for $640 million, shows the long arm of causation where the consulting company assumed both criminal and FCA liability because it allegedly advised Purdue to turbocharge sales to high-value prescribers.

The DOJ argued that McKinsey's advice to a drug company on how to increase opioid sales contributed to its client's illegal activity.[22] The DOJ could make the same argument related to PE investors. That is, the investor may be liable if its advice to the portfolio company on how to maximize profits may cause any resulting fraud under the FCA. This risk is highlighted by active management in the day-to-day operations of the portfolio

company.

These cases, collectively, demonstrate the importance of due diligence and prompt corrective action once potential fraud is discovered. The more control the PE firm exercises over the portfolio company's medical operations, the more liability it potentially incurs.

Evolving State Law

In 2025, several state legislatures introduced bills related to PE healthcare investments, to mixed results. Some passed, some are pending and some failed to advance.

The bills fall into three major categories: (1) limiting PE's influence on healthcare decisions; (2) extending FCA liability to entities, such as PE firms with an ownership or controlling interest in the company; and (3) requiring notification to the state before a healthcare entity is sold.

Bills Prohibiting PE Interference With Clinical Judgments

California and Oregon passed laws, effective Jan. 1, 2026, that prohibit PE investors from interfering with or controlling medical practices in a way that compromises the clinical professional judgment of providers.

- In October, Gov. Gavin Newsom signed California S.B. 351,[23] which prohibits PE firms from, among other things, making decisions about overall patient care, controlling hiring decisions of clinical staff, or making coding or billing decisions.
- In Oregon, Gov. Tina Kotek signed S.B. 951,[24] which similarly restricts MSOs and nonmedical entities from controlling medical practices and compromising provider clinical judgment. Similar to the law in California, S.B. 951 restricts PE firm control over matters such as hiring clinical staff or setting prices for clinical services.

Bills Extending State FCA Liability to Owners

Earlier this year, Massachusetts amended its False Claims Statue to extend liability to those with an "ownership or investment interest"[25] in the violating entity, if the owner or investor fails to disclose the violation to the state within 60 days of identifying the violation.

The change now directly subjects PE investors to FCA liability and imposes obligations on

the owners to monitor the portfolio company's compliance with healthcare laws.[26]

Bills Imposing Conditions on Changes in Ownership

Many states have passed laws aimed at regulating or increasing transparency in ownership of healthcare entities.

- In May, Indiana passed a law requiring some healthcare entities, including hospitals, to report ownership information to the state.[27]
- Effective in April, Massachusetts requires PE companies investing in the healthcare services industry to provide notice of the proposed change in ownership 60 days before closing. The state will analyze whether to conduct a cost and market impact review.[28]
- In June, Maine passed a law with a one-year moratorium prohibiting PE companies from acquiring or increasing direct or indirect ownership of a hospital in the state. It prohibits operational control over the hospital which includes both influencing the actions or policy of the hospital or choosing, appointing, or terminating members of the board of directors, senior leaders, managers or consultants.[29]
- In April, New Mexico passed the Health Care Consolidation Oversight Act,[30] which requires parties to give the state notice of certain hospital healthcare transactions. Importantly, it authorizes the state to approve, conditionally approve, or disapprove ownership changes based on a variety of factors, such as quality, access to care and costs.
- California enacted a law requiring MSOs to provide written notice to the state 90 days before a healthcare transaction involving either the sale of its assets, or a transfer of control of a "material amount" of assets or operations to another entity.[31] The information will be reviewed by the department[32] responsible for analyzing and reducing healthcare costs; it is unclear whether the information will become public. The law will become effective in the new year.

In addition to the above laws, Illinois, Connecticut, North Carolina, Pennsylvania, Colorado, Louisiana, Minnesota, Texas, Vermont, Washington and Wisconsin all introduced various other bills related to PE investments in healthcare entities. Although these bills did not pass this legislative year, the volume of legislation and diversity of jurisdictions indicate this will continue to be a hotbed of interest and activity in the new year.[33]

Looking Ahead: Protecting the Asset by Investing in Compliance

The more act involvement the PE investor exercises in operating the portfolio company, the more fraud liability exposure it creates. Yet ensuring proper management will enhance the portfolio entity's performance and profitability.

Companies should evaluate their risk tolerance to strike the right balance when directing policies, taking seats on the board, and actively involving itself in billing or the day-to-day operations of the portfolio company.

Exceptional Compliance Programs

Understanding compliance risks is the frontline defense to protecting the portfolio asset. An effective compliance program is more than policies in a binder — it is well-resourced, nimble and staffed with compliance experts who have a meaningful voice at the company.

Many companies are financially struggling at the time of acquisition and may not be equipped with sufficient expertise. Pre- and post-acquisition compliance reviews can identify compliance weaknesses before problems arise.

Active Board Oversight

Boards must actively oversee the company's compliance program and take decisive action when issues arise. Boards must be educated about the healthcare regulatory requirements and understand how the compliance department is identifying and managing risk.

Best practices include timely, periodic communication between the board and compliance department, focus on key compliance measures, empowerment of the compliance officer, and robust board training.

Compliance Risk Assessments

Preacquisition, making a compliance assessment as part of due diligence can identify vulnerabilities that need to be addressed after closing. Having an objective, privileged compliance post-acquisition risk assessment can highlight compliance gaps, assess the strength of compliance personnel and the efficacy of audits and risk assessments, and establish key compliance reporting and performance indicators.

Self-Disclose Fraudulent Conduct

Self-disclosures are one hallmark of an exceptional compliance program because they show the government that the company was able to identify the fraud, quantify the harm to the government, notify it and take corrective action.

To incentivize this behavior, both the DOJ's guidelines in Justice Manual Section 4-4.112[34] and HHS OIG's self-disclosure protocol[35] set forth tangible benefits to reward the self-disclosing company with lower penalties and less oversight.

This was true in the Gallant Capital Partners self-disclosure this year, where the PE company paid $1.75 million for its portfolio company's fraudulently submitted false claims under its Air Force contract, despite not meeting the contract's cybersecurity requirements.[36]

Conclusion

Private equity's growing footprint in healthcare brings both opportunity and risk. For PE firms, protecting portfolio value means embedding compliance into every stage of the investment life cycle.

Robust compliance programs, active board oversight and thorough risk assessments are essential safeguards against enforcement actions and reputational harm. In today's enforcement climate, strong compliance oversight is the best insurance against FCA liability.

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[2] Marcelo Cerullo et al., Research: What Happens When Private Equity Firms Buy Hospitals?, Harv. Bus. Rev. (Mar. 30, 2023), https://hbr.org/2023/03/research-what-happens-when-private-equity-firms-buy-hospitals. For example, Moderna is backed by private equity.

[3] Alan Condon, Why Pennsylvania Leads the Country in Hospital Closures—and What It Will Take to Stop It, Becker's Hosp. Rev. (Oct. 23, 2025), https://www.beckershospitalreview.com/finance/why-pennsylvania-leads-the-country-in-hospital-closures-and-what-it-will-take-to-stop-it/#:~:text=More%20hospitals%20have%20closed%20in,hospital%20%E2%80%94%20Sharon%20(Pa.).

[4] Soma Biswas, Hospital Failures Following Private-Equity Payouts Leave Patients, Taxpayers in Lurch, Wall St. J. (Jul 30, 2025), https://www.wsj.com/articles/hospital-failures-following-private-equity-payouts-leave-patients-taxpayers-in-lurch-d706b41d.

[5] Id.

[6] Rick Archer, New Complaint Says Ex-Execs Turned Steward Into 'Zombie', Law360 (Nov. 25, 2025), https://www.law360.com/real-estate-authority/articles/2415237

[7] 31 U.S.C. § 3729.

[8] False Claims Act Settlements and Judgments Exceed $2.9B in Fiscal Year 2024, U.S. Dep't of Just. (Jan 15, 2025), https://www.justice.gov/archives/opa/pr/false-claims-act-settlements-and-judgments-exceed-29b-fiscal-year-2024.

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[10] Former Owners of Therakos, Inc. Pay $11.5 Million to Resolve False Claims Act Allegations of Promotion of Drug-Device System for Unapproved Uses to Pediatric Patients, U.S. Dep't of Just. (Nov 19, 2020), https://www.justice.gov/usao-edpa/pr/former-owners-therakos-inc-pay-115-million-resolve-false-claims-act-allegations; Johnson et al v. Therakos, Inc. et al, Docket No. 2:12-cv-01454 (E.D. Pa. Mar 22, 2012).

[11] Compounding Pharmacy, Two of Its Executives, and Private Equity Firm Agree to Pay $21.36 Million to Resolve False Claims Act Allegations, U.S. Dep't of Just. (Sept 18, 2019). https://www.justice.gov/archives/opa/pr/compounding-pharmacy-two-its-executives-and-private-equity-firm-agree-pay-2136-million.

[12] Fentanyl Qui Tam False Claims Act Case filed by Young Law Group, P.C. Leads To $9 Million Settlement, PR Newswire (May 31, 2023), https://www.prnewswire.com/news-releases/fentanyl-qui-tam-false-claims-act-case-filed-by-young-law-group-pc-leads-to-9-million-settlement-301837845.html.

[13] Third Amended Complaint, United States of America et al. v. INSYS Therapeutics, Inc., et al., No. 2:16-cv-07937 (C.D. Cal. Oct. 25, 2016).

[14] Id. at ¶ 229.

[15] EEG Testing and Private Investment Companies Pay $15.3 Million to Resolve Kickback and False Billing Allegations, U.S. Dep't of Just. (Jul. 21, 2021), https://www.justice.gov/archives/opa/pr/eeg-testing-and-private-investment-companies-pay-153-million-resolve-kickback-and-false.

[16] United States ex rel. Martino-Fleming v. S. Bay Mental Health Ctrs., 540 F. Supp. 3d 103, 130 (D. Mass. 2021).

[17] United States v. Kindred Healthcare Inc., 469 F. Supp. 3d 431, 444 (E.D. Pa. 2020).

[18] Id.

[19] Id.

[20] Id. "[R]elator claims that defendants 'treated the funds of one entity as the funds of another'; 'collected, distributed and shared the revenues, profits, and assets of its nursing homes'; 'continually siphoned all the revenues from each of the individual nursing homes

... into a centralized master account.' Based on these allegations, relator claims that defendants' nursing facilities 'were entirely dependent on Defendants for their continued existence and ongoing operations' and were 'grossly undercapitalized with essentially all cash generated by the nursing homes' operations swept into accounts controlled by Defendants.'" Id. at 455.

[21] Danie Seiden, Kindred Healthcare, Whistleblower End Nursing Home Fraud Suit, Bloomberg Law (Apr. 1. 2025), https://www.bloomberglaw.com/bloomberglawnews/federal-contracting/XAE4QS5K000000?bna_news_filter=federal-contracting.

[22] Justice Department Announces Resolution of Criminal and Civil Investigations into McKinsey & Company's Work with Purdue Pharma L.P.; Former McKinsey Senior Partner Charged with Obstruction of Justice, U.S. Dep't of Just. (Dec. 13, 2024), https://www.justice.gov/archives/opa/pr/justice-department-announces-resolution-criminal-and-civil-investigations-mckinsey-companys.

[23] S.B. 351 (Ca. 2025).

[24] S.B. 951, 83rd Leg. (Or. 2025). The law prohibits MSOs and their employees from: 1) owning or controlling a majority share in professional medical entities; 2) serving as a director, officer, or employee, or independent contractor to direct the management of a professional medical entity; 3) voting the shares of medical entities; 4) controlling or restricting the sale or transfer of shares of such entities; 5) paying dividends from shares in medical entities; 6) acquiring or financing the majority of shares in the entity; (7) issue shares of stock, or (8) exercising any control over the entity's administrative, business, or clinical operations, including by hiring, setting staffing levels, diagnostic coding, setting clinical standards or policies, setting policies for billing, advertising services, setting prices, or negotiating with payors.

[25] The Massachusetts False Claims Statute defines "ownership or investment interests" as: 1) direct or indirect possession of equity in the capital, stock or profits totaling more than 10 per cent of an entity; 2) interest held by an investor or group of investors who engages in the raising or returning of capital and who invests, develops, or disposes of specified assets; or 3) interest held by a pool of funds by investors, including a pool of funds managed or controlled by private limited partnerships, if those investors or the management of that pool or private limited partnership employ investment strategies of any kind to earn a return on that pool of funds. Chapter 343 of the Acts of 2024 Section 27.

[26] Mass. Acts ch. 343, § 27 (2024) (effective Apr. 8, 2025). The law was signed into law on January 8, 2025 and became effective on April 8, 2025.

[27] H.B. 1666, 124th Gen. Assemb., 1ST Reg. Sess. (In. 2025). The law passed on May 6, 2025. A penalty of $1,000 per day may be assessed for each day the report is not timely filed.

[28] Mass. Acts ch. 343, § 27 (2024) (effective Apr. 8, 2025). If a party fails to provide notice, it may be subject to $25,000 penalties for each week of delay.

[29] S.P. 416 L.D. 985, 132nd Leg., 1st Spec. Sess., (Me. 2025). The bill became law on June 22, 2025.

[30] H.B. 586, 57th Leg., 1st Sess. (Nm. 2025).

[31] Cal. Health & Safety Code § 127500.2.

[32] OHCA was established by SB 184 in 2022 within the Department of Health Care Access and Information. AB 1415 (Cal. Health & Safety Code § 127500.2) expands its authority to include oversight of MSOs, PE, and hedge funds.

[34] U.S. Dep't of Just., Just.Manual§4-4.112 (2019).

[35] U.S. Dep't of Health & Human Servs., Office of Inspector Gen., Health Care Fraud Self-Disclosure Protocol, https://oig.hhs.gov/compliance/self-disclosure-info/self-disclosure-protocol/.

[36] California Defense Contractor and Private Equity Firm Agree to Pay $1.75M to Resolve False Claims Act Liability Relating to Voluntary Self-Disclosure of Cybersecurity Violations, Dep't of Just. (Jul. 31, 2025), https://www.justice.gov/opa/pr/california-defense-contractor-and-private-equity-firm-agree-pay-175m-resolve-false-claims.