

False Claims Act Enforcement: The Developments Reshaping Risk for 2027

November 10, 2026

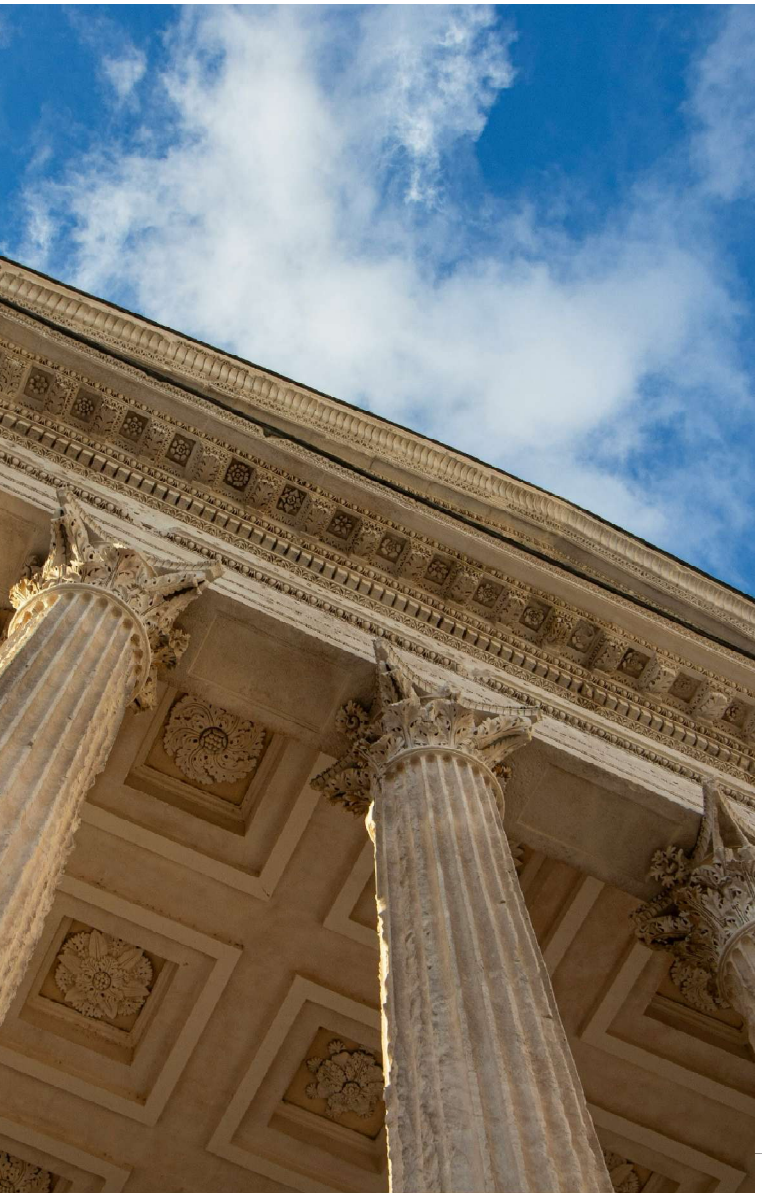
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Agenda

1 | 2026 Policy Changes, Settlements and Decisions

2 | DOJ Spending: National Fraud Enforcement Division & Whistleblower Trends

3 | Healthcare Enforcement

4 | AI, Cybersecurity, Certifications & New Liability Theories

5 | 2027 Watchlist, including the Constitutional Challenge



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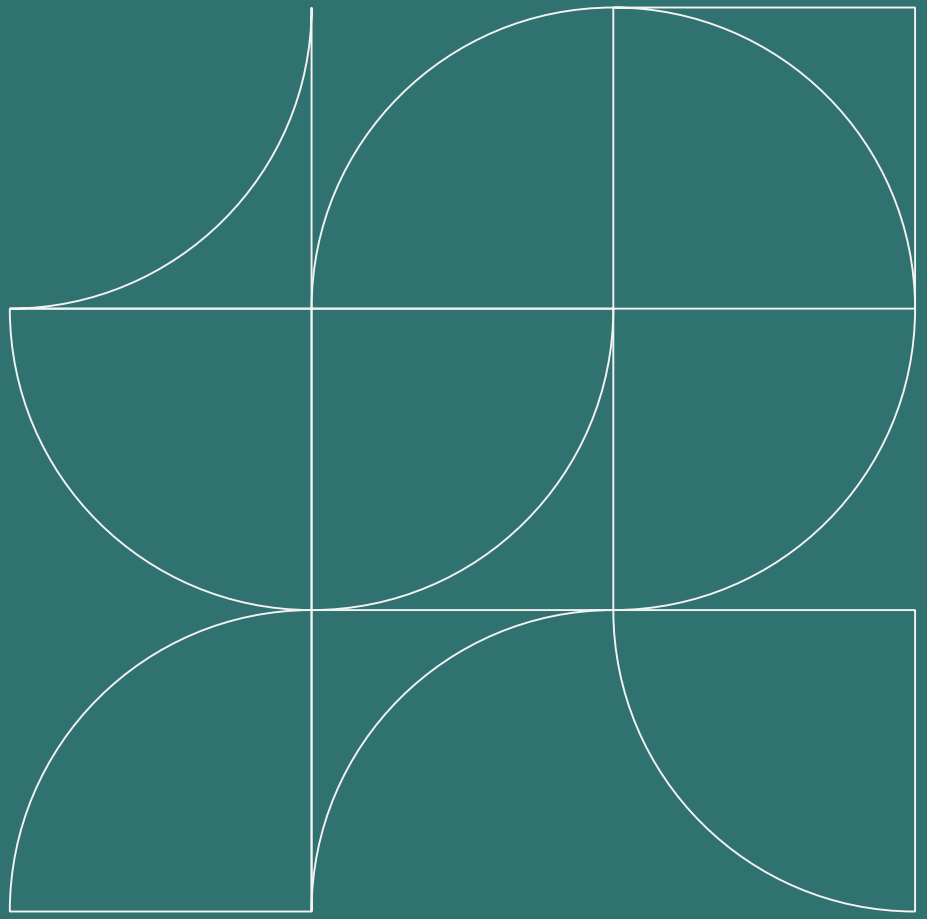
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2026 Policy Changes, Settlements and Decisions



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Justice Manual Revisions (September 18, 2026)

- Agency guidance (JM 1-19.210): DOJ may not bring an action based solely on noncompliance with guidance. This applies to all DOJ litigation, not just FCA cases.
- Four uses of guidance survive: to show scienter, as evidence of industry standards, where a company expressly certified compliance with guidance, and where a contract incorporates the guidance.
- Qui tam dismissals (JM 4-4.111): DOJ attorneys now "will in each case assess" dismissal of a declined qui tam. Before, they "should also consider" it. The seven Granston factors are kept.
- Our read: DOJ is narrowing what it will pursue, not backing off FCA enforcement.

Court Decisions Worth Knowing

- ***Pannek v. ADM (N.D. Ill., Sept. 2026)***
  - A cybersecurity FCA complaint was dismissed because broad claims that cyber matters to the government didn't show materiality to ADM's specific contracts and grants.

- ***U.S. ex rel. Ling v. City of Los Angeles (9th Cir., Sept. 2026)***
  - A HUD compliance agreement was not an "alternate remedy" that would entitle the relator to a share of it. The $38.3M FCA settlement was affirmed.

- ***U.S. ex rel. Novak v. Walgreens(N.D. Ill., Sept. 2026)***
  - The court declined to decide whether the relator gets a share of the states' opioid settlement and sent back to state courts.

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Policy, Settlements and Decisions

2026 Settlements That Signal Where DOJ Is Going

Month	Amount	Signal
May	n/a	PPP forgiveness approval; no relator; multiple agencies involved
June	$21.3M	SDVOSB "pass-through" scheme; individual executives personally liable
June	$3.6M+	SDVOSB control requirements
August	$21.5M	Second Civil Rights Fraud Initiative settlement; started as a qui tam
August	about $1M	Required testing wasn't performed; no allegation that bad product shipped
September	$25M	Largest DEI-based FCA settlement so far; restitution suggests a multiplier of about 2x; no qui tam

DOJ Spending: National Fraud Enforcement Division & Whistleblower Trends



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The National Fraud Enforcement Division (NFED)

- The March 2026 executive order created the Task Force to Eliminate Fraud.
- DOJ's Health Care Fraud Unit was absorbed into NFED as its Health Care Fraud Section.
- **Directive 26-12** (late September 2026) is NFED's corporate enforcement directive and names healthcare fraud as its top priority.
- New Health Care Fraud Strike Force capacity: an expansion into Massachusetts and a West Coast Strike Force covering Arizona, Nevada and Northern California (April 30).
- The D.C. U.S. Attorney's Office created a standalone Fraud and Asset Recovery Division focused on the FCA (September 23).

Faster, More Data-Driven Qui Tam Review

- FOCUS initiative (April 30): invites "data miner" relators to present their methods to Civil Fraud before filing.
- Shumate memo (May 27): benefits-fraud qui tams get reviewed within the 60-day seal period where practicable and no later than 120 days. More of these cases will be litigated by relators.
- Qui tam filings: 980 in 2024, 1,297 in 2025, and 780 in 2026 as of DOJ's April 30 FOCUS announcement.
- FY2025: about $6.8B in total recoveries, about $5.3B of it from qui tams.

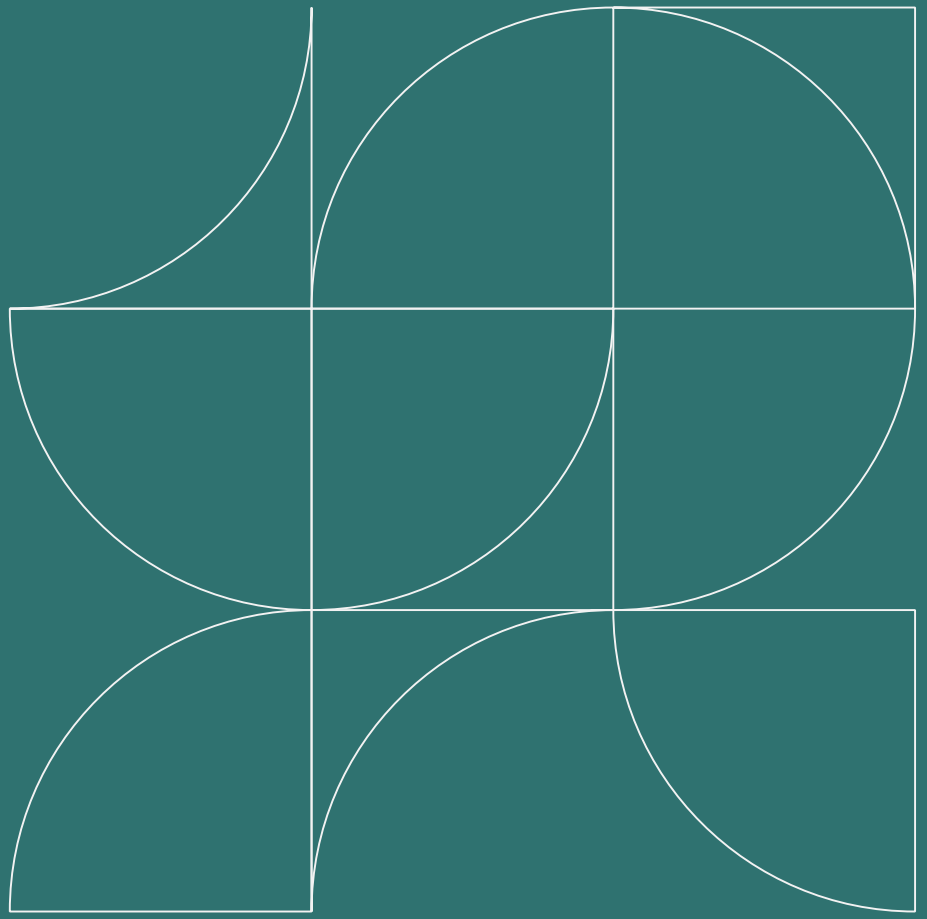
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DOJ Spending: National Fraud Enforcement Division & Whistleblower Trends

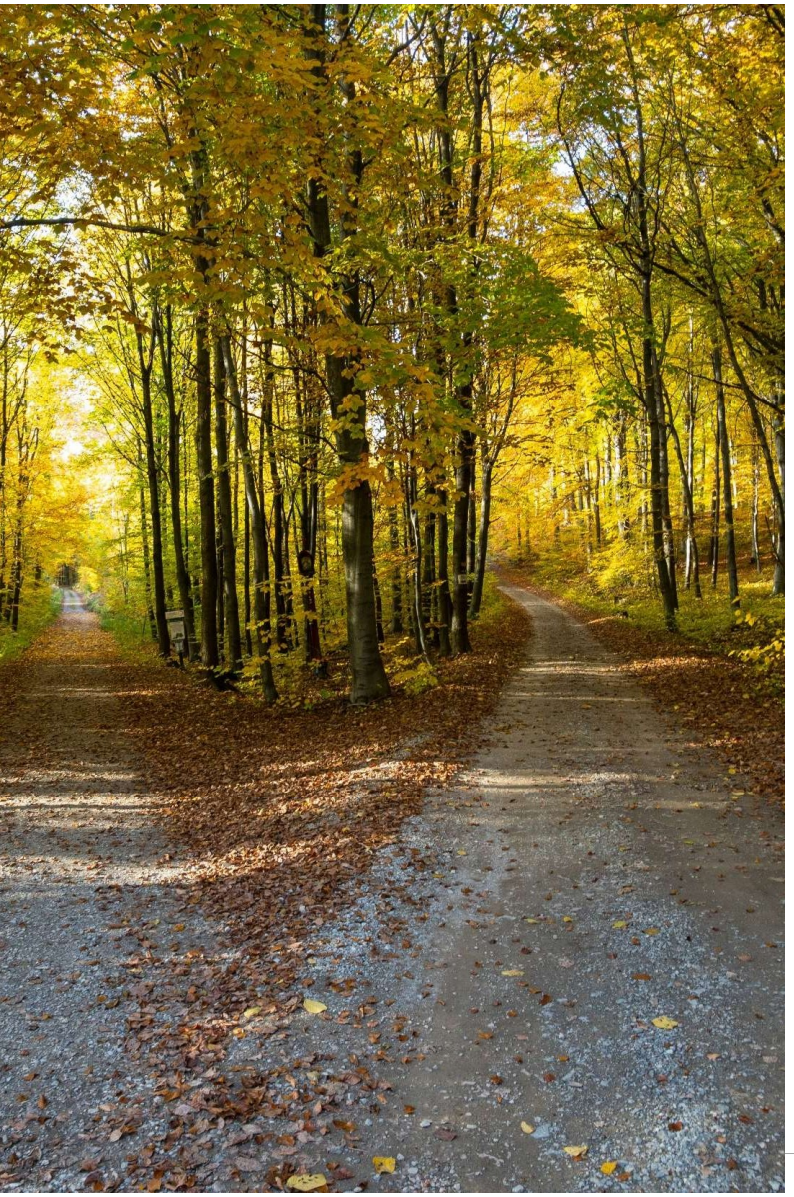
Two Tracks of Enforcement

- **Track 1:** qui tams brought by data miners whose cases DOJ has effectively vetted in advance.
- **Track 2:** cases DOJ builds itself from interagency analytics and IG referrals.
- PPP is the testing ground, and Congress extended the limitations period for PPP fraud to 10 years in 2022.
- DOJ's DEI-related false certification cases can reach back up to 10 years, per DAAG Brenna Jenny's House testimony.

Healthcare Enforcement



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Two New Self-Disclosure Paths

- **Criminal path (October 15):** A company disclosing possible criminal healthcare conduct only has to go to the NFED Fraud Division. That one disclosure earns credit under both DOJ's Corporate Enforcement Policy and HHS-OIG's Self-Disclosure Protocol, and OIG updated its protocol to say criminal matters go to DOJ.
- **Civil Pilot (October 22):** the first FCA disclosure program with a set price.
  - Runs six months; submissions are due **April 22, 2027**.
  - Repayment is 1.25 to 1.6 times the base amount. The multiplier turns on timeliness, duration and scope, senior-leadership involvement, financial benefit, and whether the company is an acquirer that inherited the conduct and promptly remediated.
  - No factual admissions. OIG will not require a Corporate Integrity Agreement, and CMS will not impose civil money penalties or seek revocation.
  - The release covers the FCA plus Medicare revocation and OIG's permissive exclusion authorities.

The Kickback Point

- DOJ concedes courts have generally found remuneration or revenue is not the right damages measure in kickback cases, but for the pilot it will skip claims-paid damages and set the base on the remuneration, the revenue from the conduct, and the absence of aggravating factors such as patient harm.
- The protocol's example is an acquirer finding legacy kickback conduct after closing, which makes this a diligence point for PE buyers and strategic acquirers.
- **Eligibility.** The conduct must be unknown to the government. If the government already knows, the company can still earn cooperation credit under Justice Manual § 4-4.112 but cannot use the pilot.
- Submissions are due by 11:59 p.m. on April 22, 2027; late or partial submissions will not be reviewed.

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The Kickback Point (cont.)

- **What the pilot is worth.** Recent negotiated settlements imply roughly a 2x multiplier: Independence Blue Cross paid $22.5M, of which $11.25M was restitution, and CVS's FCA agreement was $189M, of which $94.5M was restitution. The pilot's 1.6x ceiling is a real discount, and it comes without admissions. Dompé earned self-disclosure credit on its $32M patient-assistance co-pay settlement but still admitted facts.
- **The largest Medicare Advantage self-disclosure.** The Villages Health self-disclosed through OIG's protocol in December 2024 and resolved for $541.5M in Chapter 11. OIG said the protocol "remains available for managed care entities and other providers that bill managed care entities." This is the best example of self-disclosure as strategy, and of how large MA exposure can get.



Whistleblowers Paid at the Charging Stage (WHIP, Oct. 20)

- **What it is:**
  - NFED's Fraud Whistleblower Incentive Program pays $10,000 to $30,000 for tips that lead to criminal charges. DOJ calls it the first program to pay an up-front award for such tips.
- **Why it pays earlier:**
  - Most government programs pay only after the criminal matter is finally resolved, including forfeiture and appeals. WHIP pays at DOJ's discretion once charges are filed, and tipsters stay eligible for larger awards elsewhere, such as the Criminal Division's Corporate Whistleblower Awards Pilot. Payment follows the filing and unsealing of an indictment, information or complaint; there is no minimum loss; it is a three-year pilot backed by $25 million from Treasury. Even tips about unsuccessful schemes qualify.

Healthcare Enforcement

Whistleblowers Paid at the Charging Stage (cont.)

- **Healthcare is the core**
  - It covers federal health care offenses, with priority on hospice, home health care, day care and special-services fraud. Tips must be voluntary, in writing, and from people who did not meaningfully participate in the fraud.
- **Contrast with qui tam**
  - An FCA relator typically receives 15% to 30% of a recovery, paid only once the case resolves; relators received roughly $330 million in FY2025. WHIP trades size for speed: a modest, near-certain payment in months rather than a larger one years later.

2026 Healthcare Resolutions

- **Complete Health ($14.1M, Aug. 3)**
  - An MSO whose MAO contracts paid it a share of what CMS paid the plans, which DOJ says created an incentive to add codes. DOJ alleges incorrect coding guidance on HCC 55 and HCC 59, chart reviews to find more diagnoses, and prompts telling doctors to add unsupported codes. The relator, a plan risk-adjustment director, named private equity firm Pharos Capital Group in the caption.
- **Magnolia Diagnostics ($19.2M + $4.8M, July 23)**
  - The lab and its owners paid $19.2M over medically unnecessary respiratory pathogen panels billed with COVID tests for seniors. What's new: investors paid $4.8M on common-law and FDCPA theories tied to distributions they received. DOJ did not need FCA liability against the investors to recover from them.
- **Texas Children's ($10M)**
  - The first resolution in DOJ's national investigation of pediatric gender-transition care, with conduct commitments and a new clinic; both entities denied the allegations. Texas receives $8,576,000. The FCA is being used for policy priorities, with state AGs as co-plaintiffs.
- **Zafirov**
  - The underlying case alleges false diagnosis codes submitted to Medicare. The Eleventh Circuit's mandate issued September 30, 2026. The MA case moves forward on remand.

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Healthcare Takeaways: Coding Work Flows

- The government is coming at coding from several directions:
  - CMS audits: payment year 2020 audits began March 20, 2026, PY2021 on May 29, and PY2024 on August 28, with PY2023 planned for this month.
  - OIG audits: OIG recommends HumanaChoice refund about $130.9M in estimated overpayments and a UnitedHealthcare Texas plan about $24.5M.
  - OIG has issued Medicare Advantage–specific compliance program guidance.
  - GAO puts FY2025 MA improper payments at $23.7B, or 6.1%.
  - Defense point: a September 2025 ruling in Humana v. Becerra vacated the RADV rule's extrapolation provisions on procedural grounds. Even so, add-only chart reviews are now a central FCA theory, as IBX shows.

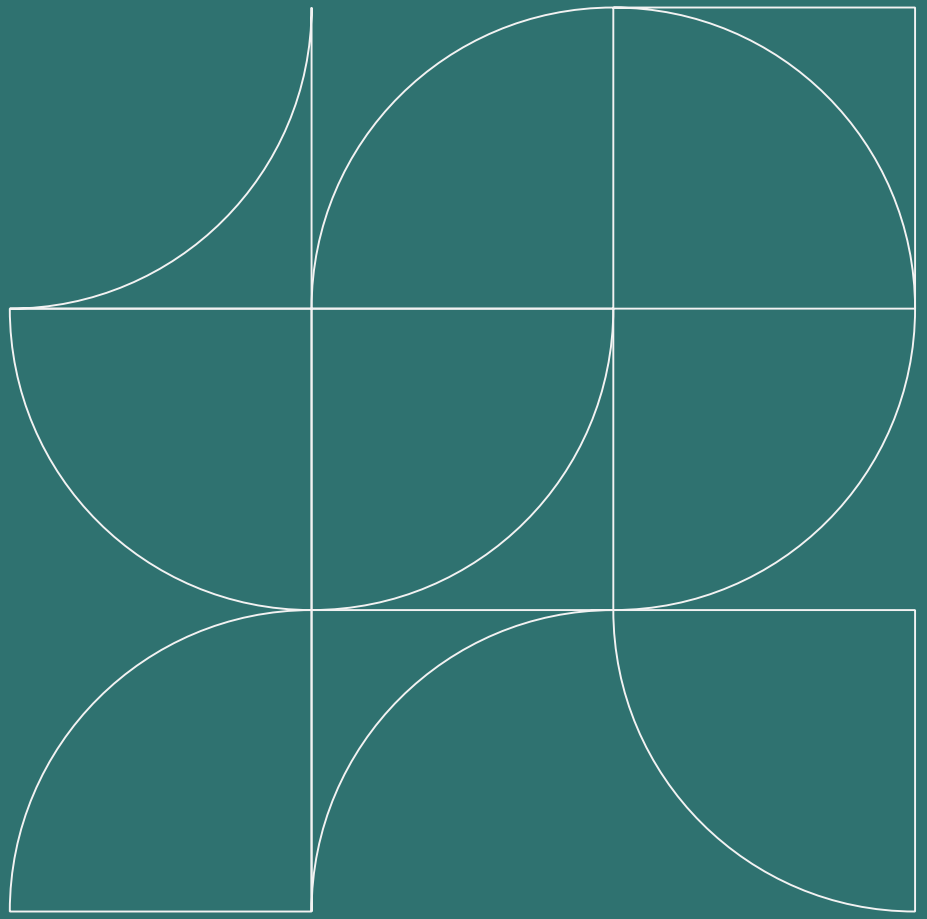
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Healthcare Takeaways (cont.)

- **The numbers -** Healthcare was more than $5.7B of FY2025's record $6.8B. For the first time, more healthcare money came from qui tams DOJ declined ($2.27B) than from cases it joined ($2.23B). FY2026 numbers usually come out in January, a useful preview hook.
- **AI in fraud schemes.**
  - 2025 takedown: defendants allegedly used AI to fake recordings of beneficiaries consenting to products; about $703M in claims, of which Medicare and MA plans paid about $418M.
  - June 2026 takedown: 455 defendants and more than $6.5B in alleged fraud; DOJ credits data analytics for target selection; cases include a $1.2B wound-allograft kickback scheme.
  - October 22 Los Angeles takedown: about $1.8B alleged, including a $1.6B sober-home scheme, $134M in unnecessary atherectomies and more than $138M in hospice fraud.
- Government analytics target the same billing patterns relators mine.

AI, Cybersecurity, Certifications & New Liability Theories



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AI

GSA's draft clause 552.239-7001 (March 2026) isn't final, and no public FCA case has yet turned on an AI-specific certification.

Cybersecurity

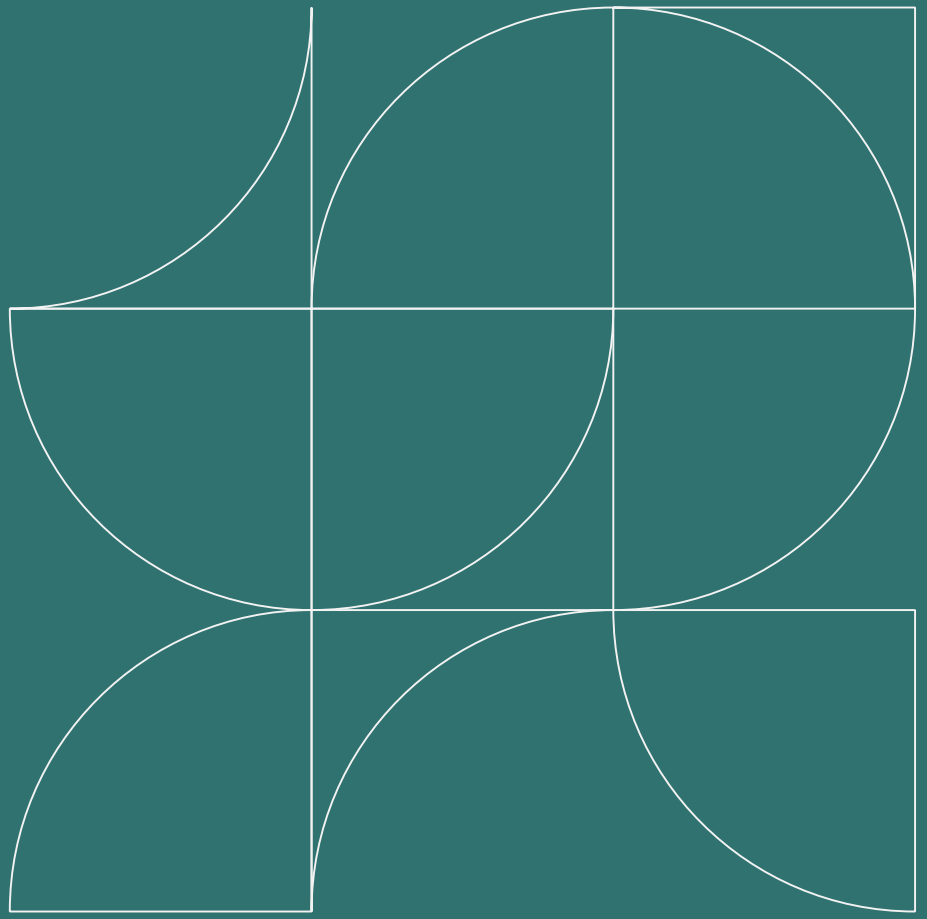
- About $52M across nine settlements in FY2025
  - The CMMC final rule took effect November 10, 2025
  - Phase II was suspended July 13, 2026, pending a 60-day review.
- DAAG Jenny cited 16 cyber-fraud settlements in five years, along with grant-fraud focus on undisclosed foreign funding and falsified research.
- *Pannek* shows materiality is still a real defense.

Certifications & New Liability Theories

Certifications as the FCA Hook

- **EO 14173** requires contractors to agree that anti-discrimination compliance is material, plus a certification about DEI programs.
- **EO 14398 / FAR 52.222-90:** agencies were told to modify existing contracts by July 24, 2026.
- *Escobar* still applies: calling something material doesn't make it material. *SuperValu* makes a documented, good-faith legal review the best defense.

2027 Watchlist and the Constitutional Challenge



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2027 Watchlist

- Whether DOJ actually moves to dismiss more declined qui tams under the revised Justice Manual
- How NFED uses its resources, and the risk of parallel criminal referrals
- The **April 22, 2027** deadline for the healthcare self-disclosure pilot
- The CMMC Phase II review and the AI clause

The Constitutional Challenge: *Zafirov*

Relators aren’t “Officers of the United States”

- Since they don't hold a continuing position, the qui tam provisions survive the Appointments Clause challenge (11th Cir., Sept. 1, 2026).
- That joins the Fifth (en banc), Sixth, Ninth and Tenth Circuits.
- The Take Care Clause and Vesting Clause arguments are still open on remand.
- Three Justices (Thomas, Kavanaugh, Barrett) have signaled interest in the question.

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2027 Watchlist

Action Items

- List every piece of agency guidance your contracts incorporate
- Scrub your certifications
- Document how you interpret ambiguous requirements
- Decide where you'd disclose before you need to

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