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Another COVID-19 Enforcement Tool: Money Laundering Law

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The novel coronavirus and resulting global health pandemic and economic crisis created a perfect storm for bad actors to engage in fraud and financial crimes. Law enforcement's response to the criminal activity spurred by the pandemic and economic stimulus and relief efforts are still nascent and focusing on low hanging frauds by individuals and small groups.

As these investigative efforts mature over the months and years ahead, the U.S. Department of Justice will look to a variety of criminal enforcement theories to hold accountable those who engage in wrongdoing whether related to the Paycheck Protection Program, COVID-19-related medical care, tests, devices and personal protective equipment, or other aspects of the pandemic and response.

And among those theories we should expect to be employed: money laundering. While originally intended to address organized and drug-related criminal conduct, white collar and fraud prosecutors have increasingly turned to the money laundering laws — and their enhanced criminal penalties — to more severely punish white collar offenses.

That trend begins with three criminal complaints against several individuals that alleged COVID-19-related health care fraud that were unsealed on May 27 in Phoenix. In one of these complaints that charges Jeremiah Faber, the CEO of Harmony Healthcare LLC, the DOJ added a money laundering count (under U.S. Code Title 18 Section 1957). We believe that this is the first COVID-19-related enforcement action that includes fraud as a predicate to a money laundering charge. And given that development, we explore how prosecutors may use similar fraud as a predicate to money laundering charges for COVID-19 related enforcement actions.

Money Laundering Basics

As we expect to see more COVID-19-related fraud investigations and prosecutions, it is useful to understand how money laundering charges may be used by prosecutors to enhance their cases in COVID-19, PPP, and other fraud cases.

There are two key statutory provisions governing money laundering: U.S. Code Title 18 Sections 1956 and 1957. Under the provisions of Section 1956(a), a person can face criminal culpability for domestic money laundering if:

- The person must conduct or attempt to conduct a financial transaction;
- Knowing that the property involved in the transaction represents proceeds of unlawful activity;
- With one of the following specific intents: (1) to promote carrying on the specified unlawful activity; (2) to engage in tax evasion or tax fraud; (3) knowing that the transaction was designed to conceal or disguise details (nature, location, source, ownership, control) about the unlawful activity or proceeds; or (4) to avoid a federal or state reporting requirement; and
- The property must, in fact, be derived from specified unlawful activity.

Under Section 1957, a person can face criminal culpability if the person knowingly engages in or attempts to engage in monetary transactions of greater than $10,000 with proceeds derived from specified unlawful activity.

The specified unlawful activity (outlined in Section 1956 paragraph 7 and in Section 1961) covers a broad range of illicit conduct, and includes various types of fraud.

Put more simply, under Section 1956, a prosecutor may charge money laundering anytime there is a crime that generates monetary proceeds from a specified unlawful activity with the intent to (1) promote the criminal activity; (2) engage in tax fraud; (3) conceal the details of the proceeds; or (4) avoid a reporting requirement.

Or under Section 1957, all that needs to be shown is a transaction of $10,000 — or attempt — with proceeds of a specified unlawful activity. It is the breadth of available intents, coupled with the long list of applicable specified unlawful activities that permit prosecutors to charge money laundering in a wide variety of white collar cases.

Why would a prosecutor add money laundering counts to wire fraud or mail fraud case? Because there are significant criminal penalties for Section 1956 violations — imprisonment up to 20 years and a $500,000 fine or twice the amount involved in the transaction, whichever is greater. For Section 1957 violations, the penalty is up to 10 years imprisonment and monetary fines, or both.

These penalties are more severe than those for other financial crimes, many of which, like conspiracy, have five-year maximum sentences. This allows a prosecutor to convert a case which would otherwise have a defendant facing a five- or 10-year sentence maximum to one in which he or she is now facing 10 or 20 years — for the same criminal conduct.

Application in COVID-19 Health Care Fraud Case

The Phoenix complaint against Faber alleges that he used Harmony's social media pages to offer free COVID-19 testing to individuals if they also completed Harmony's comprehensive whole-body assessment. Faber then submitted false claims for reimbursement for the assessments to Mercy Care, Arizona's health care benefit program.

The government alleges that these claims billed for services that were not medically necessary and included false claims for services provided by physicians that were not involved in the assessments — a typical health care fraud and false claims case. And under Section 1347, the applicable law for those offenses, Faber would ordinarily face a maximum of 10 years in prison and fines of up to $250,000.

But then comes the money laundering charge. With no additional facts, the prosecutors are able to allege a violation of the money laundering laws as follows: Health care fraud is a predicate (or specified unlawful activity) for money laundering. And by alleging that Faber knowingly engaged and attempted to engage in a transaction of more than $10,000 derived from a specified unlawful activity, the government can charge an additional crime. This gives the government significant leverage in plea negotiations as the defendant will likely be anxious to shed one charge and cap his liability.

Prognosticating PPP Fraud and Money Laundering

What about money laundering in the case of PPP fraud? We have not seen any money laundering charges in PPP-related fraud prosecutions — yet. But it is not hard to imagine that such charges may be coming, particularly in egregious fraud cases or where the prosecutor wants to seek leverage over a prospective defendant.

It would not be hard to imagine taking a wire fraud allegation in the PPP context to serve as the predicate of a money laundering charge and combining it with one of the money laundering specific intents, i.e., concealment or promotion. If an applicant submitted false information to secure PPP funds — where prosecutors can show fraud — then any subsequent financial transactions with those funds could provide the basis for money laundering charges.

Organizations and individuals should thus be mindful of the weight of the money laundering sword prosecutors can yield. What can begin as a false statement can swell quickly into a money laundering case with vastly more severe consequences for prospective defendants.

We expect to see U.S. attorney's offices and Main Justice offices begin to leverage money laundering charges and indictments in a broad array of COVID-19-related investigations and prosecutions. All participants in the PPP and other health care and economic relief programs and stimuli should tread carefully knowing that money laundering charges could lurk nearby.