MONEY FOR NOTHING

How private equity has defrauded Medicare, Medicaid, and other government health programs, and how that might change

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Key Points

- The False Claims Act (FCA) is a federal law that establishes liability for individuals or companies that defraud government programs in the US. It is commonly used against health care companies that defraud Medicaid, Medicare, and related programs.
- There is substantial overlap between the profit-seeking behavior exhibited by private equity owners of health care companies and fraudulent activities targeted by the FCA.
- Until recently, private equity owners of health care companies were rarely implicated in FCA actions. However, recent cases, as well as statements from the U.S. Department of Justice (DOJ), suggest that FCA enforcement against private equity firms is ramping up.
- The U.S. Department of Justice has signaled that it will place particular focus on private equity firms whose companies have illegally collected CARES Act funds.
- Since 2013, at least 25 health care companies have paid settlements totaling over $570 million for allegedly violating the FCA while under private equity ownership. The private equity owners of those companies currently own around 200 other health care companies combined. Except in a handful of cases, the private equity owners were not included in the settlements.
- Several case studies demonstrate the various ways the FCA has been enforced against private equity-owned companies, and how private equity has historically been implicated in defrauding the federal and state governments:
    - **Diabetic Care Rx** (DCRX), a specialty pharmacy services company and its private equity owner **Riordan, Lewis & Haden** settled an FCA lawsuit that alleged DCRX engaged in a kickback scheme to generate referrals of expensive prescriptions and other products, regardless of patient need, which were reimbursed by TRICARE, the federal health care program for military members and their families.
    - **South Bay Mental Health Center**, a mental health provider owned by **H.I.G. Capital**, settled an FCA lawsuit alleging that SBMHC used unqualified, unsupervised mental health workers and unqualified supervisors to treat its patients in Massachusetts, and then fraudulently billed MassHealth. Litigation against H.I.G. for its role in the alleged fraud is ongoing.
    - Immunotherapy device maker **Therakos** and previous owner **The Gores Group together** paid to settle allegations that Therakos promoted its systems for unapproved uses in pediatric patients between 2006 and 2012.
    - In December 2020, **Apria Healthcare** a home respiratory services provider owned by **the Blackstone Group**, settled allegations that it engaged in several schemes in violation of the FCA related to the rental of non-invasive ventilators.
    - **Benevis (d/b/a Kool Smiles)**, a dental services organization previously owned by **Friedman Fleischer & Lowe**, paid $24 million to settle allegations that it knowingly submitted false claims for payment to state Medicaid programs for medically unnecessary dental services performed on children insured by Medicaid.
    - **CRC Healthcare**, a behavioral health company previously owned by **Bain Capital**, paid to settle allegations that it violated the FCA by providing substandard treatment to adult and adolescent Medicaid patients suffering from alcohol and drug addiction.
- Appendix A is a list of FCA settlements from the last eight years that involved private-equity-owned health care companies.

Introduction

The health care industry has increasingly been a target for private equity investment. This is despite the fact that private equity investment in health care companies carries substantial risk to patients, workers, and investors. Firms typically take controlling ownership stakes, multiple, if not a majority, of board seats at acquired companies, and substantially influence the health care company's operations and growth strategy. The typical private equity investment playbook—pursuing outsized returns over short time horizons while using high levels of debt—may lead behavior that jeopardizes patient care.

For example, private equity-owned health care companies have seen the following issues:[i]

- Reduced staffing, or filling beds without adequate staffing ratios
- Overreliance on unlicensed staff to reduce labor costs
- Failure to provide adequate training
- Pressure on physicians to provide unnecessary and potentially costly services
- Violation of regulations required for participants in Medicare and Medicaid such as anti-kickback provisions, creating litigation risk

Private equity investment in health care is expected to continue. In 2020, health care proved resilient to the COVID-19 pandemic and investment in health care outpaced the broader industry. Additionally, asset managers have record levels of available capital earmarked for health care investment; as of 2019, private equity firms had $29.2 billion in dry power for health care.[1]

Private equity firms benefit from the trillions of dollars of government health care spending. In 2019, Medicare spending reached $799.4 billion and Medicaid spending reached $613.5 billion. Together, they accounted for 37% of national health care expenditure.[2] The COVID-19 pandemic has increased opportunities for private equity to collect federal health care dollars.

As of January 21, 2021, the Federal government has distributed hundreds of billions of dollars to providers under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act): $142.8 billion in grants, $548.6 billion in loans, and $12.2 billion in contracts.[3]

As private equity ownership of health care companies grows and continues to benefit from taxpayer funded health care spending, regulators are seeking out tools to mitigate the impact of business practices that put patients and workers at risk and strain public health care resources.

One new tactic used by the regulators to hold private equity accountable is the False Claims Act. There is substantial overlap between the risks associated with private equity ownership of health care companies and the activities targeted by the False Claims Act; in an effort to achieve the high returns often expected by private equity investors, companies' aggressive profit-seeking may result in fraudulent activity.

[i] *See prior reports by Private Equity Stakeholder Project for case studies documenting these risks: Adverse Reaction: How will the flood of private equity money into health care providers impact access to, cost and quality of care? (November 2019); Understaffed, Unlicensed, and Untrained: Behavioral Health Under Private Equity (September 2020); Raiding the Safety Net: Leonard Green & Partners Seeks to Walk Away from Prospect Medical Holdings after Collecting $570 Million in Fees and Dividends (January 2020)*

The False Claims Act

The False Claims Act (FCA) is a federal law that establishes liability for individuals or companies that defraud governmental programs. It includes liability for collecting money from the federal government to which the individual or company may not be entitled, using false statements to retain that money.[4]

The FCA is commonly used to prosecute health care companies that defraud Medicaid, Medicare, and related programs by submitting false claims for a variety of activities. Fraudulent activities may include providing substandard care, providing medically unnecessary services, receiving kick-backs for services provided, filing claims for services not provided, and providing services by unlicensed or improperly licensed providers.[5]

Federal FCA actions may be brought by the U.S. Department of Justice (DOJ) Civil Division. An individual whistleblower may bring a qui tam action, filing an action on behalf of the government.[6]

Until recently, the DOJ rarely intervened in FCA cases against private equity firms for actions committed by their portfolio companies. Instead, private-equity-owned companies have typically assumed full liability for settlements related to alleged fraudulent behavior, regardless of the level of involvement in operations by the company's private equity owners.

However, this appears to be changing. Several recent cases underscore a new willingness by the federal government to pursue private equity owners of health care companies that may be violating the FCA.

Now, the COVID-19 pandemic and the massive federal spending to support health care providers has ushered in a new cause for FCA action against private equity.

US Department of Justice expected to ramp up FCA enforcement amid COVID-19 pandemic

The COVID-19 pandemic may have profound implications for the way the DOJ litigates FCA cases against private equity owners of health care companies. In a speech to the US Chamber of Commerce's Institute for Legal Reform in June 2020, then Principal Deputy Assistant Attorney General Ethan Davis indicated the DOJ will hold private equity firms liable for their portfolio companies' actions where applicable, especially related to CARES Act funds.

> **"Where a private equity firm knowingly engages in fraud related to the CARES Act, we will hold it accountable."**
>
> **– Principal Deputy Assistant Attorney General Ethan Davis**

> *"Our enforcement efforts may also include, in appropriate cases, private equity firms that sometimes invest in companies receiving CARES Act funds. When a private equity firm invests in a company in a highly-regulated space like health care or the life sciences, the firm should be aware of laws and regulations designed to prevent fraud. Where a private equity firm takes an active role in illegal conduct by the acquired company, it can expose itself to False Claims Act liability. A pre-pandemic example is our recent case against the private equity firm Riordan, Lewis, and Haden, where we alleged that the defendants violated the False Claims Act through their involvement in a kickback scheme to generate referrals of prescriptions for expensive treatments, regardless of patient need. Where a private equity firm knowingly engages in fraud related to the CARES Act, we will hold it accountable."*[7]

The speech raises questions about whether private equity-owned health care companies will be at increased risk for regulatory action related to collecting COVID-19 stimulus money. Private equity owned companies are

generally considered ineligible for the Small Business Administration's Paycheck Protection Program (PPP) loans, which were designed to provide relief to small businesses during the pandemic. Despite this, many private-equity-owned companies have collected stimulus funds.

The Data

The lawsuit referenced in the Davis speech is one of the clearest examples of the DOJ beginning to pursue private equity firms in relation to alleged FCA violations. Other FCA lawsuits shed light on the ways in which private equity ownership of health care companies may lead to activities that defraud government programs.

Many of these private equity firms are frequent health care investors, suggesting that there are substantial due diligence and operational failures that have enabled the alleged fraudulent behavior. This raises questions about what steps investors are taking to ensure that other health care portfolio companies are in compliance with applicable laws and regulations.

With a handful of exceptions, most of these cases did not name the private equity firms that owned the companies during the alleged fraudulent activity.

In just three cases, private equity owners were named in the settlement agreements and agreed to pay: Diabetic Care Rx (Riordan, Lewis, & Hayden), Therakos (The Gores Group), and Holiday Retirement (Fortress Investment Group).[8] Litigation against H.I.G. Capital for its alleged role in fraud by its company South Bay Mental Health Center is ongoing.

In other cases, the private equity firms or their executives were named in the complaints, but were not named in the settlement agreements: Benevis/Kool Smiles (Friedman, Fleischer & Lowe), Genova Diagnostics (Levine Leichtman Capital Partners).[9]

The following case studies attempt to analyze how private equity ownership of health care companies in a variety of specialties may have impacted FCA compliance, and how those FCA actions were litigated.

> **"We found that since 2013, at least 25 private equity-owned health care companies have paid a total of at least $570 million to settle false claims act suits related to alleged billing fraud that took place under private equity ownership. Altogether, the private equity firms that owned those companies currently own nearly 200 other health care companies, many of which also bill Medicare, Medicaid, and other government health programs."**

Case Studies

Diabetic Care Rx (d/b/a Patient Care America)
Riordan, Lewis & Haden
Specialty pharmacy

The DOJ's landmark 2019 settlement with Diabetic Care Rx (d/b/a Patient Care America) and its owner, Los Angeles-based private equity firm Riordan, Lewis & Haden (RLH), marks a shift in the federal government's willingness to hold private equity firms accountable for their companies that defraud public programs.

In a case settled September 2019 for $21.26 million, the DOJ alleged that RLH was involved in a scheme with Diabetic Care Rx (DCRX) to defraud TRICARE, which provides health insurance for active-duty military, veterans, and their families.[10]

DCRX is a specialty pharmacy operator specializing in renal nutrition therapy and compounding pharmacy products.[11]

According to the complaint, DCRX allegedly paid kickbacks to marketers to target military veterans and their families for medically unnecessary creams and vitamins. These creams were "manipulated by the Defendants and marketers to ensure the highest possible reimbursement from TRICARE." DCRX allegedly paid doctors to prescribe the creams and vitamins without physically examining patients.[12]

Additionally, DCRX and its marketer allegedly improperly paid copayments on behalf of patients referred by the marketer for prescriptions without making a need-based determination, and such payments were masked as originating with a "sham charitable organization" affiliated with the marketer. According to the DOJ, "The purpose of paying or waiving copayments was to induce patients to purchase medication by eliminating any financial barrier to their purchase of the drugs."[13]

The DOJ alleged that RLH "knew of and agreed to" the DCRX scheme and "financed the kickback payments to the marketers."[14] "At all relevant times," the DOJ wrote, "RLH managed and controlled PCA on behalf of the private equity fund through two RLH partners, Michel Glouchevitch and Kenneth Hubbs, who served as officers and/or directors of PCA and of a holding company with an ownership interest in PCA."[15]

The complaint further suggests that RLH's high return expectations influenced its support for the fraudulent activity:

> *"At the time DCRX was acquired, RLH planned to increase DCRX's value and sell it for a profit in five years….Shortly after DCRX was acquired, Medicare reimbursement rates dropped for the nutritional therapy that DCRX provided to End Stage Renal Disease patients, and DCRX's revenue correspondingly dropped. Restoring DCRX's profitability became RLH's primary objective.*
>
> *…In November 2013, RLH initiated DCRX's entry into the business of non-sterile compounding of topical creams for 'pain management' to capitalize on 'the*

> **"As an investor in health care companies, RLH knew or should have known when it acquired PCA in July 2012, that health care providers that bill federal health care programs are subject to laws and regulations designed to prevent fraud, including the [Anti-Kickback Statute]."[19]**

> *extraordinarily high profitability of this therapy,' which RLH anticipated could result in a 'quick and dramatic payback' on its investment in DCRX."*[16]

The "pain management initiative" was led by RLH's representatives on DCRX's board, Glouchevitch and Hubbs.[17] As of January 2021, Glouchevitch remains a Managing Partner at RLH.[18]

RLH owns multiple other healthcare companies, including Silverado Senior Living and the Chartis Group.[20]

Riordan, Lewis & Haden Health Care Investments	
COMPANY	**TYPE**
Silverado Senior Living	Elder care
the Chartis Group	Health care advisory services

RLH's Silverado Senior Living is facing ongoing litigation for wrongful death and elder abuse and neglect related to COVID-19 infections at its Southern California facility, where close 100 residents and staff tested positive for the virus and 14 died. It was one of California's worst outbreaks at an assisted living facility. Silverado also received a PPP loan of between $5 and $10 million dollars.[22]

South Bay Mental Health Center – H.I.G. Capital
Mental health

The DOJ's pending FCA lawsuit against H.I.G. Capital related to the firm's mental health company represents another landmark case for FCA action against private equity firms.

In 2012 H.I.G. created mental health company Community Intervention Services (CIS), which it used to buy up mental health providers and addiction treatment centers. It subsequently acquired Massachusetts-based South Bay Mental Health (now known as South Bay Community Services[23]).[24]

In February 2018, South Bay Mental Health Center (SBMHC) agreed to pay $4 million to the Commonwealth of Massachusetts to settle allegations of billing fraud that occurred under H.I.G.'s ownership.[25] The whistleblower lawsuit, joined by Massachusetts Attorney General Maura Healey, alleged that SBMHC fraudulently billed Massachusetts' Medicaid Program for mental health care services provided to patients by unlicensed, unqualified, and unsupervised staff members at 17 clinics across the state. In a statement, Healey's office wrote that the company "provided substandard care to many vulnerable patients and fraudulently billed the state for its inadequate services."[26]

In a rare move, the lawsuit also named H.I.G. Capital as a defendant. Attorney General Healey alleged that H.I.G. "knew that SBMHC was providing services in violation of regulatory requirements and did not bring SMBHC operations into compliance or make any attempts to repay the money owed to MassHealth, as required by law." HIG allegedly cited the large profit margins as a reason to acquire the company.[27]

H.I.G. has failed in multiple attempts to have the case against it dismissed. "Because it is alleged that H.I.G. members and principals formed a majority of the C.I.S. and South Bay Boards, and were directly involved in the operations of South Bay, the motion to dismiss the H.I.G. entities is also denied. A parent may be liable for the submission of false claims by a subsidiary where the parent had direct involvement in the claims process."[28]

The U.S. District Court for the District of Massachusetts held that H.I.G. could be liable because its "members and principals formed a majority of the C.I.S. and South Bay Boards, and were directly involved in the operations of South Bay."[29]

As of September 2018, the majority of C.I.S.'s five-member board of directors were H.I.G. executives; board members Eric Tencer, Nick Scola, and Steven Loose were all principals or managing directors at H.I.G. (Scola is now at private equity firm Abry Partners).[30]

As of January 2021, the lawsuit against H.I.G. is in mediation.

Beginning in October 2020, H.I.G. began quietly winding down operations at CIS. It sold three of its subsidiaries to another private equity-owned mental health company: Access Family Services (AFS), Family Behavioral Resources (FBR) and Autism Education and Research Institute (AERI).[31]

Then on January 5, 2021, CIS filed for bankruptcy. It sold its remaining mental health providers, SBMHC and Futures Behavioral Health, to a different private equity-owned mental health company.

H.I.G. owns numerous other health companies,[32] including St. Croix Hospice and Pinnacle GI Partners, which it acquired in the final months of 2020.[33] H.I.G. also owns Wellpath, a prison and detention healthcare company that has made headlines for the numerous lawsuits, complaints, and federal enforcement actions against it related to patient care.[34]

H.I.G. Capital Health Care Investments

COMPANY	TYPE	COMPANY	TYPE
Apollo Endosurgery	Endoscopic surgical products	MedPro Advantage	Dermatology
Arvelle Therapeutics	Biopharmaceuticals	Medusind	Revenue cycle management
Barnet Dulaney Perkins	Eye care	Neurana Pharmaceuticals	Pharmaceuticals
BioVectra	Pharmaceutical CDMO	Nevakar	Pharmaceuticals
CardioFocus	Medical devices	Nutrinia	Pharmaceuticals
Clarify Medical	Laser hair removal	On Target Laboratories	Pharmaceuticals
Clarus Therapeutics	Biopharmaceuticals	Orbus Therapeutics	Pharmaceuticals
Community Intervention Services	Behavioral health	Pinnacle GI Partners	Digestive health
Crothall Laundry Services	Health care laundry services	Reliant Rehabilitation	Physical therapy
Eruptr	Health care marketing	RxSight	Medical devices
Exagen	Marketing for rheumatologists	Sage Hospice	Hospice
Halex Istar	Pharmaceuticals	Soleo Health	Pharmaceuticals
HealthSTAR	Pharmaceutical marketing	Southwestern Eye Center	Eye care
Iconic Therapeutics	Biopharmaceuticals	St. Croix Hospice	Hospice
Intact Vascular	Medical devices	Taconic Biosciences	Pharmaceuticals
InterDent	Dental services	TLC Vision	Eye care
Iron Bow	Health tech	US MED	Medical supplies
Jenny Craig	Weight management	Vernacare	Medical supplies
Just Home Healthcare Services	Behavioral health	Wellpath	Correctional health

Therakos – The Gores Group
Immunotherapy treatment manufacturer

Therakos is a maker of immunotherapy treatment devices used in the treatment of blood cancer. The Gores Group purchased Therakos from a subsidiary of Johnson & Johnson in 2012 and owned it until 2015.[35] In November 2020, Therakos' former owners, including the Gores Group, agreed to pay $11.5 million to resolve False Claims Act allegations.

The US government alleged that between 2006 and 2015, Therakos marketed and promoted a device/drug delivery system to treat pediatric patients for uses not approved by the FDA. Because the bulk of the allegations referred to actions that took place prior to the Gores Group's ownership, the private equity firm was made to pay a $1.5 million settlement to resolve allegations that the prohibited sales and promotion practices continued after it purchased Therakos.[36]

"While physicians are free to exercise their independent medical judgment to prescribe medications for uses beyond FDA approved indications, pharmaceutical and device companies cannot interfere with doctors' judgment by allegedly pushing the sale of their drugs or devices for non-FDA approved uses, especially in vulnerable populations," said U.S. Attorney William McSwain said in November 2020. "That is what allegedly happened here, and my Office will continue to investigate such cases and hold companies accountable when there could be an effect on pediatric or other vulnerable patients."[37]

In December 2013, the Gores Group collected a debt-funded dividend from Therakos, taking out at least $73.5 million in new debt on Therakos to pay itself a $74.2 million dividend.[38]

Apria Healthcare – The Blackstone Group
Respiratory home health

Apria Healthcare provides home respiratory therapy, home infusion therapy and home medical equipment. Private equity firm the Blackstone Group has owned Apria since it took the company private in October 2008.[39] On December 21, 2020, the US Attorney for the Southern District of New York announced that Apria agreed to pay $40.5 million to settle allegations of fraudulent billing practices.[40]

According to the lawsuit, Apria engaged in several schemes in violation of the FCA related to the rental of non-invasive ventilators (NIVs). Apria allegedly expanded its use of NIVs because programs like Medicaid paid as much as $1,400 per month to cover their costs.[41]

In a press release announcing the settlement, the US Attorney's Office wrote:

> *"…while Apria knew that it was responsible for monitoring patients' utilization of their NIVs and to stop billing when NIVs were no longer being used, it did not have enough staff, or "respiratory therapists," to conduct such monitoring. As a result, Apria routinely billed Medicare and other programs when it*

Recent dividends collected from Apria:[46]		
DATE	**AMOUNT**	**FUNDING**
Dec-20	$200.3 million dividend to stockholders +$9.7 million to stock appreciation rights (SARs) holders (i.e. execs)	$260 million of Incremental Term Loans.
Jun-19	$175 million to stockholders and SARs holders	$150 million Term Loan from Citizens Bank and syndicate of lenders
Jul-18	$75 million	

did not know whether NIVs were still being used by patients and, therefore, remained medically necessary. Further, even when Apria had information indicating that patients were no longer using their NIVs, it often continued to bill the federal health programs."[42]

Though Blackstone owned Apria for the duration of the alleged fraudulent activity and multiple Blackstone executives serve on Apria's board,[43] it was not a party in the lawsuit.

In April 2020, Apria CEO Starck applauded the federal Centers for Medicare & Medicaid Services' (CMS)' relaxation of Medicare billing rules for home respiratory therapies in response to the COVID-19 pandemic, noting that "burdensome paperwork and **proof of delivery requirements** have been relaxed," (emphasis added) and further urged CMS to delay implementation of a competitive bidding payment system.[44]

Despite the impending fraud settlement, on December 11 Apria completed a $260 million dividend recapitalization, taking on debt to pay a $210 dividend to private equity owner Blackstone and other owners.[45]

The dividends far outstrip Apria Healthcare's profits. Since 2018 (through September 2020), Apria has generated $84.7 million total in operating profits.[47]

Additionally, Apria appears to have paid Blackstone millions of dollars in fees. Under a fee agreement signed when Blackstone took over the company in October 2008, Apria pays Blackstone an annual management fee of equal to the greater of $7 million or 2% of the Company's EBITDA for the preceding year, as well as a $1.2 million fee for the year ended December 2008 (during which Blackstone owned April for less than three months). Under the agreement, Apria also pays a transaction fee equal to 1% the value of any transactions (e.g. acquisition, divestiture, disposition, merger, consolidation, restructuring, refinancing, recapitalization). The agreement was set to terminate twelve years from the date of the agreement—October 28, 2020.[48]

Neil Simpkins, a Senior Managing Director at Blackstone, led the company's acquisition of Apria and has been on Apria's board since Blackstone acquired the company in 2008.[49] Simpkins also led Blackstone's 2004 acquisition of Vanguard Health Systems, which in 2015 settled False Claims Act allegations for upcoding Medicare billings and violating the Anti-Kickback Statute.[50]

Blackstone is one of the largest health care investors in the US, with 55 health care investments totaling $26.2 billion since 2007.[51]

Kool Smiles/Benevis – Friedman Fleischer & Lowe
Dental services organization

In January 2018, dental services provider Benevis (d/b/a Kool Smiles) paid $23.9 million to settle FCA allegations that it performed and billed for medically unnecessary dental services performed on children insured by Medicaid.[52] The alleged activity took place entirely under the ownership of private equity firm Friedman Fleischer & Lowe (FFL).

The DOJ alleged that Benevis facilities submitted claims for performing medically unnecessary tooth extractions and root canals on babies, and sought payments for baby root canals that were never performed. The DOJ also alleged that Benevis "routinely pressured and incentivized dentists to meet production goals through a system that disciplined 'unproductive' dentists and awarded 'productive' dentists with substantial cash bonuses based on the revenue generated by the procedures they performed."[53]

The DOJ found that the fraudulent activity took place at 130 of Benevis-affiliated clinics, which submitted false claims to 17 different state Medicaid programs.[54]

FFL acquired Benevis in 2004.[55] The alleged fraud took place between January 2009 and December 2011.[56]

The Blackstone Group Health Care Investments

COMPANY	TYPE
Apria Healthcare	Respiratory care
Change Healthcare	Revenue cycle management
Precision Medicine Group	Precision medicine
Sema4	Health tech
Annexon Biosciences	Biopharmaceuticals
Reata Pharmaceuticals	Pharmaceuticals
Alnyam Pharmaceuticals	Pharmaceuticals
Geo-Young	Pharmaceuticals
AYUMI Pharmaceutical	Pharmaceuticals
Center for Autism and Related Disorders	Behavioral health
Med Imagem	Medical imaging
NantPharma	Pharmaceuticals
NUA Surgical	Medical devices
TeamHealth	Physician staffing
XinRong Medical Group	Medical devices

> "The DOJ alleged that Benevis facilities submitted claims for performing medically unnecessary tooth extractions and root canals on babies, and sought payments for baby root canals that were never performed."

While FFL ultimately was not a party to the settlement, the amended complaint highlights how the company's high return expectations played a role in the alleged fraud:

> *"Not only did FFL's interest in the profits of portfolio companies provide a significant incentive to maximize those profits, FFL also intended to sponsor additional private equity funds, and its success in attracting investors in subsequent funds would depend greatly on the returns earned by investors in existing funds managed by it."*[57]

> *"FFL…established the business requirements necessary to attain the desired rate of return from the Kool Smiles clinics and directed [Benevis] to undertake these steps necessary to achieve those returns knowing that those returns would and did include the submission of false Medicaid claims. Accordingly, FFL and Capital Partners II are liable for the submission of those false claims as detailed herein."*[58]

The almost $24 million settlement Benevis paid was reportedly the second largest FCA dental settlement in history. In March 2018, two months after the settlement, Benevis was recapitalized by private equity firms Littlejohn & Co. and Tailwind Capital.[60] Benevis filed for Chapter 11 bankruptcy two years later—in August 2020.[61]

As of December 2020, FFL owns six other health care companies: Autism Learning Partners, Eyemart Express, Orthodontic Partners, Summit Behavioral Healthcare, Versant Health, Wellstreet Urgent Care.[62]

Friedman Fleischer & Lowe Health Care Investments	
COMPANY	**TYPE**
Autism Learning Partners	Behavioral health
Eyemart Express	Eye care
Orthodontic Partners	Orthodontic services
Summit Behavioral Healthcare	Behavioral health
Versant Health	Eye care
Wellstreet Urgent Care	Urgent care

CRC Healthcare - Bain Capital
Addiction treatment

In April 2014, Bain Capital-owned CRC Healthcare agreed to pay $9.25 million to settle an FCA lawsuit. CRC Healthcare was a behavioral health company specializing in addiction treatment for adults and youth. The DOJ alleged that for six years, a CRC facility in Tennessee knowingly submitted false claims by consistently providing substandard care to adult and adolescent patients suffering from alcohol and drug addiction.[63]

Bain Capital acquired CRC in February 2006, the year the alleged fraudulent activity began.[64]

Allegations against CRC included admitting patients in excess of state capacity laws, failing to maintain adequate staff-patient ratios, having services provided by staff that were not properly licensed, failing to make a licensed psychiatrist available to patients, and double-billing Medicaid for prescriptions given to patients.[65]

A former CRC employee acted as whistleblower for the lawsuit in response to a patient death at the Tennessee facility. The whistleblower also described finding 12 patients sitting on the floor outside the nurses' station because they were sick and the office was closed.[66] The state of Tennessee effectively closed the facility in 2011 after three patients died over the span of a year. In October 2014, six months after settling the allegations of fraud, Bain reached an agreement with Acadia Healthcare to acquire CRC.[68]

As of December 2020, Bain lists ten health care companies in its portfolio: Aveanna Healthcare, Cerevel, Grupo Notre Dame Intermédica, IQVIA, Kestra Medical Technologies, QuVa Pharma, Stada, Surgery Partners, U.S. Renal Care, and Zelis.[69]

Bain Capital Health Care Investments

COMPANY	TYPE
Aveanna Healthcare	Home health
Cerevel	Neuroscience
Grupo Notre Dame Intermédica	Health and dental plans (Brazil)
Kestra Medical Technologies	Medical devices
QuVa Pharma	Pharmaceuticals
STADA	Pharmaceuticals
Surgery Partners	Surgery centers
U.S. Renal Care	Dialysis centers
Zelis	Health tech

Appendix A:
PE-Owned Health Care Companies that Paid FCA Settlements

Below is list of health care companies that have paid settlements within the last eight years for allegations of violating the False Claims Act while under private equity ownership.

AccentCare/Guardian

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Oak Hill Capital Partners	Home health and hospice	2015	Ascension Health, Vetcor, Kansas Medical Center, Cannon County Hospital, Vantage Oncology	$3,000,000

Advanced Pain Management

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Chicago Growth Partners	Pain management	2020	Advanced Pain Management, Caprion, EndoGastric Solutions, Scribe America, Zogenix	$1,000,000

Apria Healthcare

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Blackstone Group	Respiratory medical supplies	2020	Apria Healthcare, Change Healthcare, Precision Medicine Group, Sema4, Annexon Biosciences, Reata Pharmaceuticals, Alnyam Pharmaceuticals, Geo-Young, AYUMI Pharmaceutical, Center for Autism and Related Disorders, Med Imagem, NantPharma, NUA Surgical, XinRong Medical Group, TeamHealth	$40,500,000

Athenahealth

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Veritas Capital, Evergreen Coast Capital (Elliott Management)	Medical billing tech	2020	Veritas Capital: Athenahealth, Cotiviti, Gainwell Technologies	$18,250,000

Benevis/Kool Smiles

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Friedman, Fleischer & Lowe	Pediatric dental services	2018	Autism Learning Partners, Eyemart Express, Orthodontic Partners, Summit Behavioral Healthcare, Versant Health, Wellstreet Urgent Care	$23,900,000

Community Intervention Services

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
H.I.G.	Mental health	2018	Apollo Endosurgery, Arvelle Therapeutics, Barnet Dulaney Perkins, BioVectra, CardioFocus, Clarify Medical, Clarus Therapeutics, Community Intervention Services, Crothall Laundry Services, Eruptr, Exagen, HealthSTAR, Iconic Therapeutics, Intact Vascular, InterDent, Iron Bow, Jenny Craig, Just Home Healthcare Services, MedPro Advantage, Medusind, Neurana Pharmaceuticals, Nevakar, Nutrinia, On Target Laboratories, Orbus Therapeutics, Pinnacle GI Partners, Reliant Rehabilitation, RxSight, Sage Hospice, Soleo Health, Southwestern Eye Center, St. Croix Hospice, Taconic Biosciences, TLC Vision, US MED, Vernacare, Wellpath	$4,000,000

Compassus

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Cressey & Company	Hospice	2014	Concentra, D4C, HHAeXchange, People Pets and Vets, RestorixHealth, Verisys, VetCor	$3,920,000

Consulate Health Care (fka La Vie Rehab)

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Warburg Pincus	Skilled nursing and rehab	2017	Alignment Healthcare, Amcare, Apteki Gemini, CityMD, EverCare, HaiHe Pharmaceutical, Helix, HTDK, Hygeia, Jinxin Fertility, Modernizing Medicine, Outset, Polyplys Transfection, Qualifacts, Quantum Health, SOC Telemed, Sotera Health, Vertice, WebPT	$225,000,000

Cordant Health Solutions

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Waud Capital	Drug testing	2020	APDerm, Apotheco, Concierge Home Care, Cordant Health Solutions, Heart+Paw, Health & Safety Institute, IvyRehab, Pharmacy Partners, GI Alliance, Unifeye Vision Partners	$11,900,000

CRC Healthcare

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Bain Capital	Addiction treatment	2014	Aveanna Healthcare, Cerevel, Grupo Notre Dame Intermédica, Kestra Medical Technologies, QuVa Pharma, Stada, Surgery Partners, U.S. Renal Care, Zelis	$9,250,000

Curo Health Services

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
GTCR	Home health and hospice	2017	AMRI, Ceba-Tech Specialty Solutions, Cole-Parmer, Corza Health, Maravai LifeSciences, Regatta Medical, Riverchase Dermatology, Sotera Health/Sterigenics, TerSera Therapeutics, Transaction Data Systems	$12,210,000

Diabetic Care Rx/Patient Care America

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Riordan, Lewis, & Hayden	Specialty pharmacy	2019	Silverado Senior Living, the Chartis Group	$21,360,000

Diagnostic Imaging Group

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Evercore Capital Partners	Outpatient diagnostic imaging	2014	No current health care investments	$15,500,000

Early Autism Project (Chancelight)

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Trimaran Capital Partners	Autism treatment	2018	No current health care investments	$8,800,000

EmCare/Envision

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Onex, Clayton Dubilier & Rice	Physician staffing	2017	Onex: Acacium Group, Carestream, SCP Health	$29,600,000

Encore Rehabilitation

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Glencoe Capital and Stockwell Capital; Revelstroke Capital Partners	Rehabilitation therapy	2020	Revelstroke: Carrus, CEI Vision Partners, Crossroads Treatment Centers, DataLink, Encore Rehabilitation Services, Family Care Center, Fast Pace Health, OrthoAlliance, Sound Physicians, The Care Team, US Renal Care, Upstream Rehabilitation Clayton Dubilier & Rice: Aglion, Covetrus, Cynosure, Drive Devilbiss Healthcare, Healogics, Huntsworth Health, Smile Direct Club	$4,030,000

Genova Diagnostics

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Levine Leichtman Capital Partners	Clinical laboratory services	2020	Genova Diagnostics, Caring Brands, Capsa Healthcare, Monte Nido, Suvet, Therapeutic Research Center	$43,000,000

Golden Living

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Fillmore Capital Partners	Skilled nursing facilities	2013	AlixaRx, Golden LivingCenters	$613,300

Greenway Health

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Vista Equity Partners	Electronic health records systems	2019	Alegeus, Allocate, Greenway Health	$57,250,000

Holiday Retirement

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Fortress Investment	Senior living	2016	Holiday Retirement, Brookdale Senior Living, Watermark at Logan Square, HealthSmart	$8,860,000

Interim Healthcare

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Halifax Group; Levine Leichtman Capital Partners	Home care, hospice, and healthcare staffing	2020	Halifax Group: ChanceLight Behavioral Health, Burke, PromptCare, Familia Dental	$1,750,000

Reliant Rehabilitation

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
DW Healthcare Partners	Rehabilitation therapy	2018	360 Behavioral Health, Aequor, Champion, Care XM, Cefaly, EHE, Hydrafacial, Med-Pharmex Inc., Pentec Health, SoClean, Spectrum Solutions, Willow Wood	$6,100,000

Therakos

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
The Gores Group	Immunotherapy	2020	No current health care investments	$11,500,000

TridentUSA

OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Audax Group and Frazier Healthcare Partners; Formation Capital	Diagnostic services	2019	Audax Group: 42 North Dental, Active Day, Altasciences Clinical Research, Aspen Surgical Products, Axia Women's Health, Belmont Medical, the Chartis Group, Corrona, Gastro Health, Global Nephrology Solutions, HOPco, Katena ProductsLifemark Health, Mediridan Behavioral Health, Phoenix Physical Therapy, StatLab Medical Products, United Urology Group Frazier Healthcare Partners: Accuity Delivery Systems, Adare Pharma Solutions, Alteon Health, Appian Rx, Caravel Autism Health, Comprehensive Pharmacy Services, Safe Global, Eptam Precision, Leiters, Matrix Medical Network, MedData, Northfield Medical, OHI, Parata, PCI Pharma Services, Pentec Health, the Core Institute, United Derm Partners, United Digestive, Vein Clinics of America Formation Capital: TridentUSA, HC-One, Extendicare, Consulate Health Care	$8,500,000

Vanguard Health Systems				
OWNER	TYPE	SETTLEMENT YEAR	OTHER HEALTHCARE COMPANIES OWNED BY PE FIRM	SETTLEMENT AMOUNT
Blackstone Group	Health system	2015	Apria Healthcare, Change Healthcare, Precision Medicine Group, Sema4, Annexon Biosciences, Reata Pharmaceuticals, Alnyam Pharmaceuticals, Geo-Young, AYUMI Pharmaceutical, Center for Autism and Related Disorders, Med Imagem, NantPharma, NUA Surgical, XinRong Medical Group, TeamHealth	$2,900,000

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