

## ***Checklist for Mediating Healthcare FCA Cases***

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### **I. Pre-Mediation Considerations**

#### **A. Attendees**

- DOJ
- State Medicaid Fraud Control Unit/State Attorney General's Office
- Corporate Client Representatives (Legal and Business)
- Relator/Relator's Counsel
- Co-Defendants
- Insurance Representatives (in person or by phone)
- U.S. Department of Health & Human Services Office of Inspector General (OIG)
- Other Payors—Tricare and FEHBP

#### **B. Scope of Mediation**

- Federal & State FCA liability
  - Global Resolution of FCA cases/Investigations in multiple jurisdictions
- OIG—Civil Monetary Penalties and Exclusion
- Treatment of Individuals
- Retaliation Claims
- Relator's Fees

### **II. Key Negotiation Points**

#### **A. Financial Resolution**

- Payment Terms/Ability to Pay
  - Timing of payments
- Collateral/Security Interests to be Granted
- Handshake Interest
  - Interest Rate

## **B. Non-Monetary Terms**

- Covered Conduct
  - Time frame
  - Entities
  - Scope of conduct
  - Scope of payors
  - Treatment of individuals (officers, directors, employees, agents)
- Cold Comfort Letter(s)
  - Corporate affiliates
  - Individuals
- OIG Release/CIA
- Express Denial

## **C. Separate Settlement with Realtor**

- Scope of a General Release
- Retaliation Claim
- Attorneys' Fees and Costs
- Confidentiality
- Tax treatment of Relator payment
  - W-2 or 1099
  - Withholding Approach
- Non-Disparagement
- Document Return or Destruction
- Timing
  - Certain Releases have Revocation Period (e.g., ADEA)

## **D. Approval Contingencies**

- Express Reservation of Approval
  - DOJ/State Chain of Approval
  - Governing Body of the Defendant (e.g. board of directors)
  - Insurance
  - Financial Institution Approval (e.g., Bond or Debt covenants)