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# CLE Presented to Health Ethics Trust

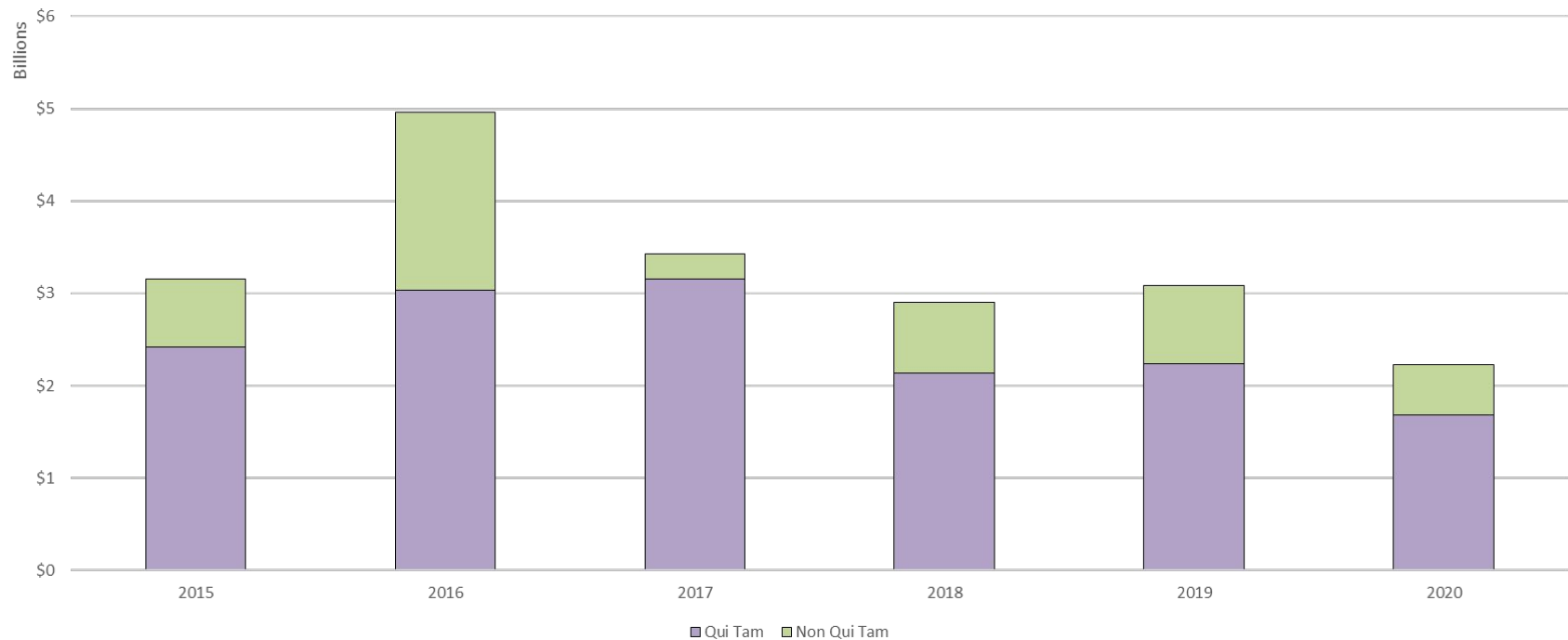
Presented by: Myla Reizen, Partner and John Lawrence, Partner

February 25, 2021

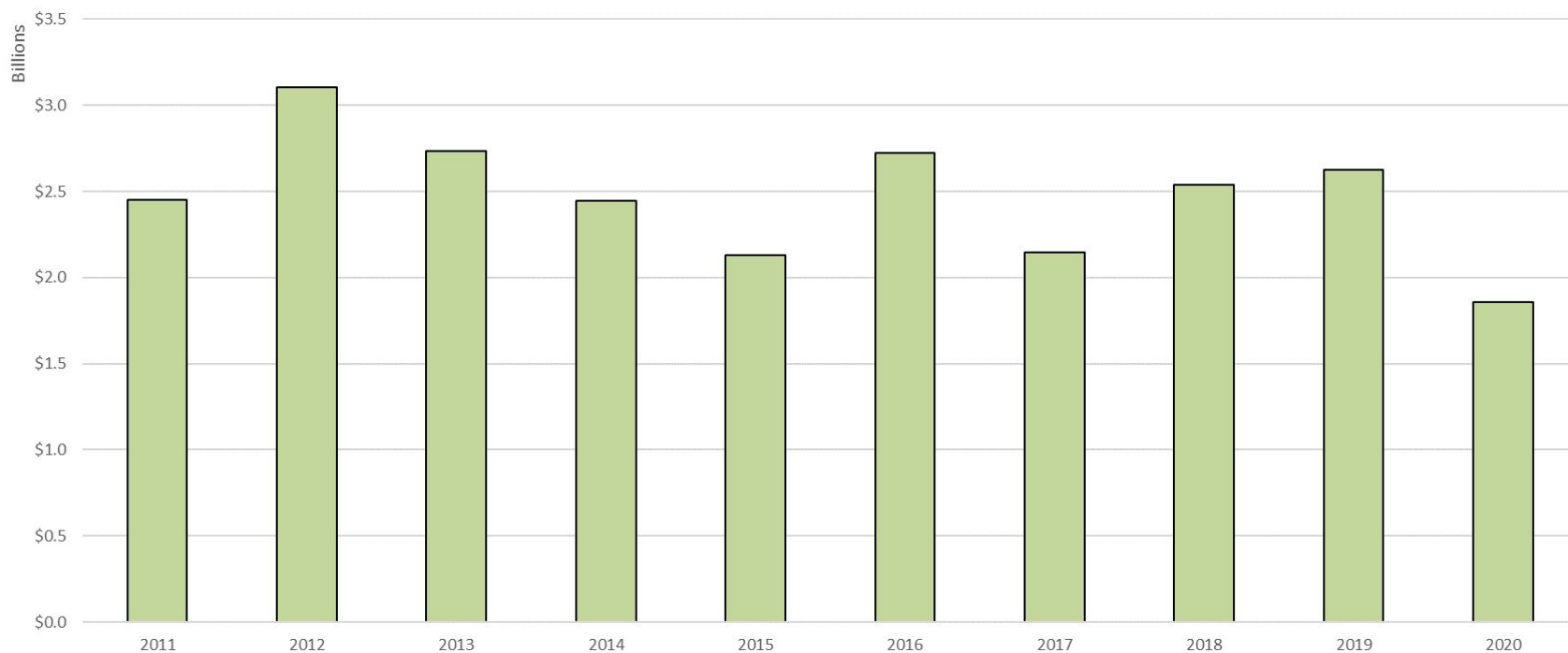


FY 2020 - FCA HEALTH CARE YEAR IN REVIEW  
By: John Lawrence

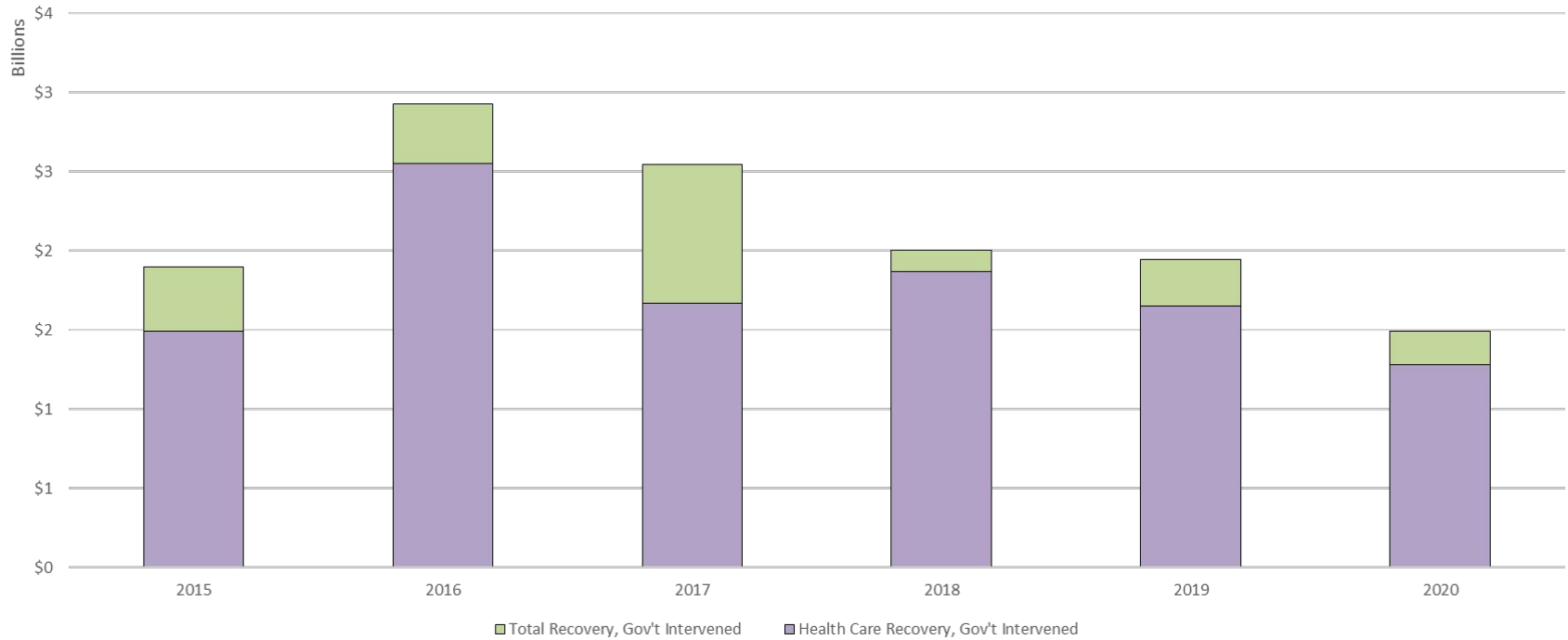
# FY 2020 CIVIL FRAUD RECOVERIES



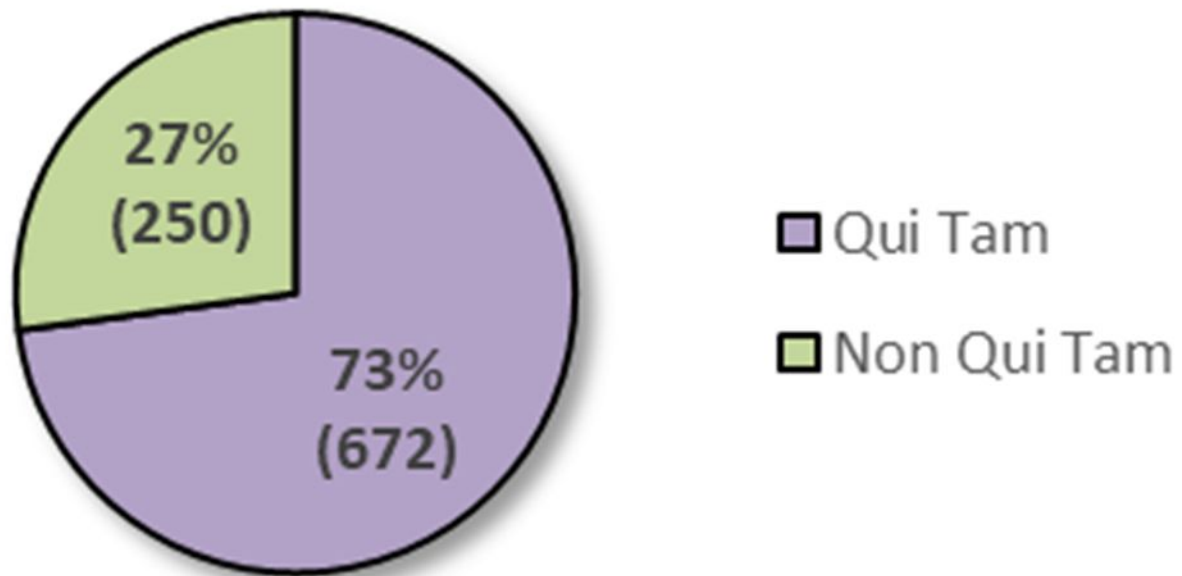
# CIVIL FRAUD RECOVERIES RELATED TO THE HEALTH CARE INDUSTRY



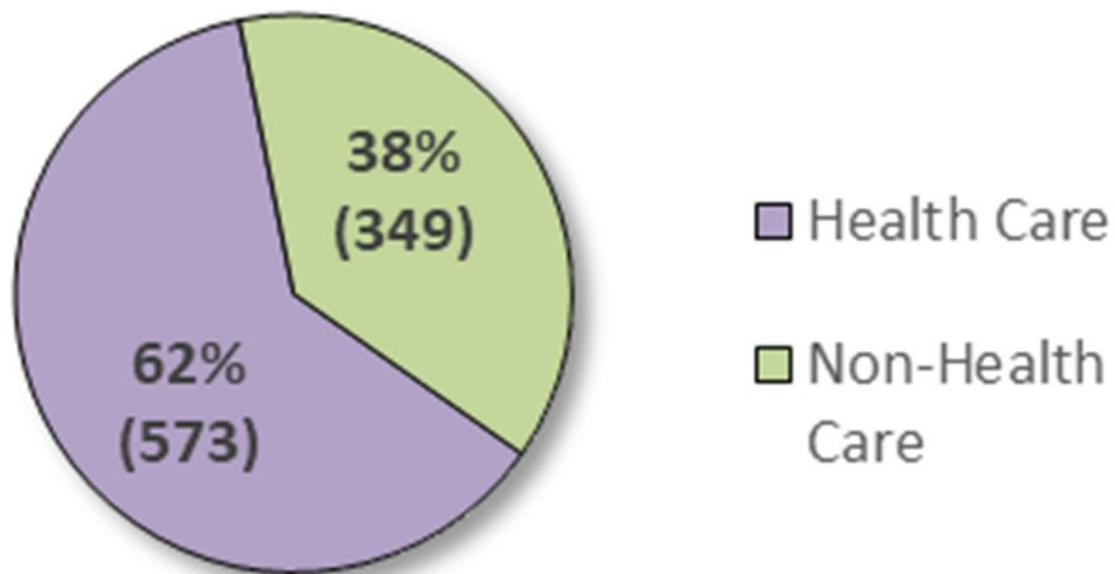
# CIVIL FRAUD RECOVERIES IN GOVERNMENT-INTERVENED MATTERS



# FCA ACTIONS FILED IN FY 2020



## HEALTH CARE-RELATED FCA ACTIONS FILED IN FY 2020







# Hot Topics For Long-Term Care Facilities

By: Myla Reizen



# AGENDA

- Statistics
- Reporting Requirements and other Regulatory Guidance
- Recent Regulatory and Industry Enforcement Activity
- Potential Liability, Surveys, Fines

# NURSING HOMES STATISTICS

- United States
- States
- Variance in Reporting

# NURSING HOMES STATISTICS

- Nursing home deaths due to COVID-19 represent a significant percentage of total virus mortality
- U.S.: >40% of country's total COVID-19 deaths
- Recent CDC Data

# COMPARISON TO AUSTRALIA

# GUIDANCE

- CMS
- CDC
- States
- Other

# REPORTING

- Changes to 42 CFR 483.80
  - Requirements for reporting to CDC
  - Requirements for reporting to residents, their representative, and families
- Q&As
- Revisions to Surveying Standard
- Enforcements

# REPORTING

- Nursing homes are required to report the following types of information to CDC about COVID-19:
  - Suspected and confirmed infections among residents and staff, including residents previously treated for COVID-19;
  - Total deaths and COVID-19 deaths among residents and staff;
  - PPE and hand hygiene supplies in the facility;
  - Ventilator capacity and supplies in the facility;
  - Resident bed and census;
  - Testing access while the resident is in the facility;
  - Staff shortages; and
  - Other information as specified by the Secretary
- Timeframes



# REPORTING

- CMS requirement to report to residents, representatives, and families.
- This information must be reported in accordance with existing privacy regulations and statute.
- This measure augments requirements for reporting infectious disease to State and local health departments.

# INFECTION CONTROL

- Early Guidance
- Changes Over Time
- Recent Guidance

# SURVEYING

- Funding
- CMS Guidance
- Focused Surveys
- Findings
  - Early Findings
  - Recent Findings
- Future Surveys
  - Routine Inspections

# NURSING HOMES HIT WITH \$15 MILLION IN COVID-RELATED FINES

- A state and federal inspection of nearly all U.S. nursing homes resulted in \$10 million in fines for serious infection control deficiencies (at 180 facilities across 22 states with immediate jeopardy) and approximately \$5.5 million in fines for failure to report COVID-19 data to federal authorities (at 3,300 facilities).
- CMS and state partners have inspected 99% of all nursing homes facilities since the beginning of the pandemic.
- Nursing homes face fines of up to \$5,000 for low-level infection control deficiencies identified on a previous inspection and up to \$20,000 for violations that occurred twice or more in the last two years.

## NURSING HOMES – EFFORTS

- Federal Efforts
  - \$8 billion in certain funding for nursing homes
    - Nursing homes must participate in a new online Nursing Home COVID-19 Training program in order to qualify for funding
  - QIOs to provide immediate assistance to nursing homes in COVID-19 hotspot areas
  - Large-scale procurement of rapid point-of-care diagnostic test instruments and tests
  - CMS to report to Governors' offices

# TESTING REQUIREMENTS

- Staff
- Residents
- Survey
- Fines for Non-compliance

# NURSING HOME CDC GUIDANCE

- Guidance
- Resources
  - Assessment tool
  - Checklist
  - Other



# RECENT STATE GUIDANCE

- Florida
- Other States

# POTENTIAL LIABILITIES

- Fines
- Immunity
- Wrongful death cases
- Federal initiatives
- Other State cases

# CERTAIN TAKEAWAYS

- Dedicated employee
- Policy and Procedures
- Training
- Self-assessment and mock survey
- Documentation
- Corporate integrity agreement

# Questions

# CONTACT INFORMATION



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