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976. Health Care Fraud—Generally

Health care fraud imposes an enormous cost to the health care system and to our nation's economy as a whole. While no one has an exact figure, the General Accounting Office estimates that health care fraud, waste and abuse may account for as much as 10 percent of all health care expenditures. Health care expenditures now exceed one trillion dollars each year, so that more than $100 billion may be lost in fraud, waste and abuse annually. Health care fraud also undermines both the cost and quality of health care provided to patients.

The Department's health care fraud efforts are centered in the United States Attorneys' Offices, the Criminal Division and the Civil Division. These efforts are coordinated by the Special Counsel to the Deputy Attorney General.

Yet successful health care fraud enforcement cannot be achieved by the Department of Justice acting alone. Americans currently receive health care from a plethora of private health insurance companies and several public programs. Each public program has its own rules for the provision of services, reimbursement for the costs of services, and the investigation of fraud. Perpetrators of health care fraud, however, rarely infiltrate just one health care system.

[cited in JM 9-44.100]

975. Sufficiency of the Indictment – Special Considerations 977. Investigative Agencies

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941. 18 U.S.C. 1343—Elements of Wire Fraud

The elements of wire fraud under Section 1343 directly parallel those of the mail fraud statute, but require the use of an interstate telephone call or electronic communication made in furtherance of the scheme. *United States v. Briscoe*, 65 F.3d 576, 583 (7th Cir. 1995) (*citing United States v. Ames Sintering Co.*, 927 F.2d 232, 234 (6th Cir. 1990) (per curiam)); *United States v. Frey*, 42 F.3d 795, 797 (3d Cir. 1994) (wire fraud is identical to mail fraud statute except that it speaks of communications transmitted by wire); *see also, e.g., United States v. Profit*, 49 F.3d 404, 406 n. 1 (8th Cir.) (the four essential elements of the crime of wire fraud are: (1) that the defendant voluntarily and intentionally devised or participated in a scheme to defraud another out of money; (2) that the defendant did so with the intent to defraud; (3) that it was reasonably foreseeable that interstate wire communications would be used; and (4) that interstate wire communications were in fact used) (*citing* Manual of Model Criminal Jury Instructions for the District Courts of the Eighth Circuit 6.18.1341 (West 1994)), *cert. denied*, 115 S.Ct. 2289 (1995); *United States v. Hanson*, 41 F.3d 580, 583 (10th Cir. 1994) (two elements comprise the crime of wire fraud: (1) a scheme or artifice to defraud; and (2) use of interstate wire communication to facilitate that scheme); *United States v. Faulkner*, 17 F.3d 745, 771 (5th Cir. 1994) (essential elements of wire fraud are: (1) a scheme to defraud and (2) the use of, or causing the use of, interstate wire communications to execute the scheme), *cert. denied*, 115 S.Ct. 193 (1995); *United States v. Cassiere*, 4 F.3d 1006 (1st Cir. 1993) (to prove wire fraud government must show (1) scheme to defraud by means of false pretenses, (2) defendant's knowing and willful participation in scheme with intent to defraud, and (3) use of interstate wire communications in furtherance of scheme); *United States v. Maxwell*, 920 F.2d 1028, 1035 (D.C. Cir. 1990) ("Wire fraud requires proof of (1) a scheme to defraud; and (2) the use of an interstate wire communication to further the scheme.").

[cited in JM 9-43.100]

940. 18 U.S.C. Section 1341—Elements of Mail Fraud

942. The Scheme and Artifice to Defraud

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917. Corporate Crimes

It is well settled that a corporation may be convicted for 18 U.S.C. § 1001 violations. *See New York Central v. H.R.R. Co.*, 212 U.S. 481, 492 (1909) *aff'd*, 212 U.S. 500 (1909); *United States v. Gold*, 743 F.2d 800, 823 (11th Cir. 1984), *cert. denied*, 469 U.S. 1217, (1985); *United States v. Cincotta*, 689 F.2d 238 (1st Cir.), *cert. denied*, 459 U.S. 991 (1982); *United States v. DeMauro*, 581 F.2d 50, 54 & n.3 (2d Cir. 1978). Corporations have been convicted of making false statements to the government. *See Gold*; *United States v. Olin Mathieson Chemical Corp.*, 368 F.2d 525 (2d Cir. 1966); *Alamo Fence Co. v. United States*, 240 F.2d 179 (5th Cir. 1957).

[cited in JM 9-42.001]

916. False Statements to a Federal Investigator

918. False Statements and Venue

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940. 18 U.S.C. Section 1341—Elements of Mail Fraud

"There are two elements in mail fraud: (1) having devised or intending to devise a scheme to defraud (or to perform specified fraudulent acts), and (2) use of the mail for the purpose of executing, or attempting to execute, the scheme (or specified fraudulent acts)." *Schmuck v. United States*, 489 U.S. 705, 721 n. 10 (1989); *see also Pereira v. United States*, 347 U.S. 1, 8 (1954) ("The elements of the offense of mail fraud under . . . § 1341 are (1) a scheme to defraud, and (2) the mailing of a letter, etc., for the purpose of executing the scheme."); Laura A. Eilers & Harvey B. Silikovitz, *Mail and Wire Fraud*, 31 Am. Crim. L. Rev. 703, 704 (1994) (cases cited).

[cited in JM 9-43.100]

939. Investigative Authority

941. 18 U.S.C. 1343—Elements of Wire Fraud

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944. Proof of Scheme and Artifice to Defraud

To sustain a conviction the government must prove the existence of a scheme; it is not required, however, to prove all details or all instances of allegedly illicit conduct. *See, e.g., United States v. Stull*, 743 F.2d 439, 442 n. 2 (6th Cir. 1984) ("It is well established that proof of every allegation is not required in order to convict; the government need only prove that the scheme to defraud existed."), *cert. denied*, 470 U.S. 1062 (1985); *United States v. Halbert*, 640 F.2d 1000, 1008 (9th Cir. 1981) ("[T]he Government need not prove every misrepresentation charged conjunctively in the indictment."); *United States v. Jordan*, 626 F.2d 928, 930 (D.C. Cir. 1980) ("The Government is not required to prove the details of a scheme; it is, however, required to prove beyond a reasonable doubt . . . that the defendant . . . willfully and knowingly devised a scheme or artifice to defraud . . . .") (quoting with approval the trial court's instruction on § 1341); *United States v. Amrep Corp.*, 560 F.2d 539, 546 (2d Cir. 1977) ("A scheme to defraud may consist of numerous elements, no particular one of which need be proved if there is sufficient overall proof that the scheme exists."), *cert. denied*, 434 U.S. 1015 (1978); *Anderson v. United States*, 369 F.2d 11, 15 (8th Cir. 1966) (all instances of illicit conduct need not be proved to sustain a conviction), *cert. denied*, 386 U.S. 976 (1967).

"All that is required is that [the defendant has] knowingly and willingly participated in the scheme; she need not have performed every key act herself." *United States v. Maxwell*, 920 F.2d 1028, 1036 (D.C. Cir. 1990). The "evidence need only show that defendant was a 'knowing and active participant' in scheme to defraud and that scheme involved interstate wire communications." *Id.* (quoting *United States v. Wiehoff*, 748 F.2d 1158, 1161 (7th Cir. 1984)).

[cited in JM 9-43.100]

943. No Loss or Gullible Victims

945. McNally And Intangible Rights

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