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Impact of Fraud and Corruption in the Healthcare Sector – Implications for Billing and Factoring Companies

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Economically uncertain times lead to an increase in crime in general, but also in white-collar crime. Cybercrime currently poses a particular threat to companies. In times of economic uncertainty, billing service providers are particularly vulnerable to losses due to fraud. This risk also exists for billing companies and factoring companies that deal with the collection of receivables from the healthcare market.

According to the press release issued by the German National Association of Statutory Health Insurance Funds (GKV Spitzenverband) on 30 November 2023, the healthcare sector has suffered a total loss of 1.13 billion euros in the last 20 years as a result of billing fraud. In the current seventh misconduct report by the National Association of Statutory Health Insurance Funds (GKV-Spitzenverband), the calculated loss in 2020/2021 was 132 million euros, with the focal point being home nursing care, with a loss of 29.60 million euros.

Claims arising from fraudulent circumstances or those that are corruptly labelled often violate legal regulations. Such claims are then unenforceable.

Factoring companies, especially if they engage in genuine factoring, must protect themselves against the acquisition of worthless receivables. This requires the introduction of effective monitoring and control systems in order to identify potential weaknesses or uncover unauthorised activities. Our colleague Julia Bette, lawyer and notary, addressed the topic of “Fraud and corruption in the healthcare sector” in her presentation to the Deutscher Factoring Verband e.V. Berlin on 8 November 2023:

What influence does the current economic crisis have on crime? What aspects of white-collar crime are relevant in the healthcare sector? What are the risks involved in purchasing healthcare receivables and what legislative responses and preventative measures are available?

Our colleague presented a comprehensive overview of historical and current cases in which various players, including doctors, pharmacists and other service

providers, have committed specific acts of fraud and corruption in the healthcare sector. Compliance with the KYC principle is of particular importance in order to avoid losses of receivables that could threaten the existence of the company. This requires, among other things, intensive familiarisation with the legal framework and appropriate training of employees. The dangers resulting from white-collar crime, which also affect receivables from the healthcare market, should be a reason for billing companies and factoring companies that are active in the healthcare sector to take the best possible preventive measures to avert damage to the company.

From a perspective of sustainability, precautions must also be taken within the company to avoid ESG risks. As is known, the seventh MaRisk amendment includes, among other things, more extensive requirements for dealing with ESG risks than before.
Fortunately, however, as a result of lobbying efforts by the factoring association, BaFin has clarified that factoring does not require an individual review of each debtor with regard to ESG risks. However, at least an analysis of the business environment is required.

Setting up effective monitoring and control systems is not always easy due to the dense regulatory material, but is nevertheless possible with legal support. The healthcare team at Schellenberg Unternehmeranwälte will be happy to advise you.