**15.42 Health Care Fraud (18 U.S.C. § 1347)**

The defendant is charged in [Count \_\_\_\_\_\_\_ of] the indictment with health care fraud in violation of Section 1347 of Title 18 of the United States Code. For the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly and willfully [executed] [attempted to execute] a scheme or plan to [defraud a health care benefit program] [obtain [[money][property]] [[owned by] [under the custody or control of]] a health care benefit program by means of material false or fraudulent [pretenses] [representations] [promises]];

Second, the defendant acted with the intent to defraud;

Third, [*name of victim or attempted victim*] was a health care benefit program; and

Fourth, the [scheme][plan] was executed in connection with the [delivery][payment] for health care [benefits][items][services].

**Comment**

*See* Instructions 4.6 (Willfully) and 4.8 (Knowingly); *see also* Instruction 4.9

(Deliberate Ignorance). In *United States v. Hong*, 938 F.3d 1040 (9th Cir. 2019), the Ninth

Circuit discussed when it might be appropriate to give a deliberate ignorance (or willful

blindness) instruction in the context of a charge of health care fraud.

The required showing regarding a defendant’s intent may be satisfied by circumstantial evidence that he acted with reckless indifference to the truth or falsity of his statements. *United States v. Dearing*, 504 F.3d 897, 902 (9th Cir. 2007).

“Health care benefit program” means any public or private plan or contract, affecting commerce, under which any medical benefit, item, or service is provided to any individual, and includes any individual or entity who is providing a medical benefit, item, or service for which payment may be made under the plan or contract. 18 U.S.C. § 24(b).

*Revised Dec. 2019*