

DOJ intervenes in False Claims Act suit over ACA's 60-day overpayment rule

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On June 27, 2014, the U.S. Department of Justice (DOJ) intervened in a False Claims Act (FCA) suit in the Southern District of New York alleging that defendants Continuum Health Partners, Inc. (Continuum) and several Mount Sinai-related hospitals that were formerly part of Continuum's network, failed to return more than \$1 million worth of Medicaid overpayments to the government within the 60-day period required by the Affordable Care Act (ACA). The DOJ's complaint specifically alleges that the defendants "knowingly concealed and knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to the [g]overnment" in violation of the FCA.

The case began after Continuum improperly billed Medicaid starting in 2009, on behalf of its hospitals, for services rendered to patients covered by a Medicaid managed care plan, Healthfirst (also named as a defendant). The overpayments arose due to Healthfirst's inclusion of coding on remittance advices to Continuum's hospitals that incorrectly indicated that additional payments from secondary payors, including Medicaid, were available. The Healthfirst payments should have constituted full reimbursement to the hospitals (meaning Medicaid would not provide any additional reimbursement), but a software glitch in the generation of Healthfirst's remittance advices erroneously indicated that the hospitals could seek additional reimbursement from secondary payors, including Medicaid. After the New York State Comptroller's office identified overpayments on a few of Continuum's hospitals' Medicaid secondary payor claims, Continuum ordered an internal investigation in which Robert Kane, a former Continuum employee and the whistleblower in this suit, uncovered more than 900 improperly billed claims between the various defendants totaling more than \$1 million in overpayments.

According to the complaint, Continuum began repaying the overpayments "in small batches of affected claims." However, the key issue in the case is not that the defendants did not return the more than \$1 million in overpayments — in fact, they did eventually pay the full amount back. But the complaint alleges that Continuum did not repay the final 300 claims for which they were overpaid until they received a civil investigative demand (similar to an administrative subpoena) concerning the overpayment. Thus, the thrust of the complaint by the DOJ is that Continuum "fraudulently delayed" the repayments. According to the ACA, an overpayment must be reported and repaid within 60 days after it is identified. The DOJ's position is that the overpayments were identified in February 2011 when Mr. Kane notified Continuum executives of the widespread problem; yet, Continuum did not fully repay the government until March 2013. The complaint also alleges that Healthfirst caused Continuum to submit the erroneous claim to Medicaid due to the glitch in its system that generated the remittance advices.

The case was originally brought by Kane as a whistleblower on behalf of the government. The Department of Justice and State of New York filed the Complaint in Intervention on June 27, 2014, indicating their intent to take over prosecution of the lawsuit from Kane. In the Complaint, the government requests the maximum penalty under the FCA — \$11,000 for every improper overpayment plus treble damages — which could result in an almost \$30 million fine for the defendants. The suit is one of the first of its kind in applying the new provisions under the ACA and makes it clear that the government plans to strictly enforce not only the repayment rules under the FCA, but also the 60-day rule under the ACA.

Click [here](#) for a full text of the Government's Complaint-In-Intervention.

