



Services performed by inappropriate staff members could lead to False Claims liability

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The United States recently agreed to settle a lawsuit against a Florida dermatologist for alleged violations of the False Claims Act (FCA). The settlement calls for the practice to pay the government \$3 million to resolve allegations that the practice billed the government for procedures that lacked basic indicia of medical necessity between January 1, 2009, and October 2013.

This case is notable because it was also alleged that some of the procedures at issue were performed by “unlicensed, uncredentialed, and unsupervised employees.” In other words, the lack of appropriate training, credentialing or supervision of employees can potentially lead to false claims allegations. This case should signal the need for health care providers to evaluate all employees who are involved in procedures to be sure that only appropriate employees are being utilized. Such a review will require health care providers to identify all employees involved in procedures, review the training provided to such employees, evaluate the employees’ scope of practice restrictions, determine those procedures that require special credentialing or licensing, and consider the necessity of supervision based upon the procedure at issue or the employees’ scope of practice. A robust compliance program should include an evaluation of the appropriateness of those employees who are involved in procedures and, as this case demonstrates, may help a health care provider avoid an allegation of a false claims violation.

Another notable aspect of this case is that it was initiated by three whistleblowers who will share more than \$500,000 as a result of the settlement. While this issue is not new, it is always worth noting the significant financial incentive whistleblowers are provided when bringing false claims allegations. Accordingly, this settlement should serve as a reminder that all compliance concerns should be taken seriously, as they can be brought to the surface at any time. A proactive compliance program that seeks to quickly identify and correct concerns is the best way to combat issues that could result in false claims allegations.

In recent years, the government has stepped up its pursuit of FCA violations. Since January 2009, the Justice Department has recovered more than \$23.4 billion in FCA



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enforcement cases; more than \$14.9 billion of that amount has involved allegations of fraud by health care providers. Such statistics should serve as a reminder to health care providers of the significant liability associated with potential FCA violations and should encourage all health care providers to be as diligent in avoiding any conduct that could lead to an FCA case as the government is in pursuing such allegations.